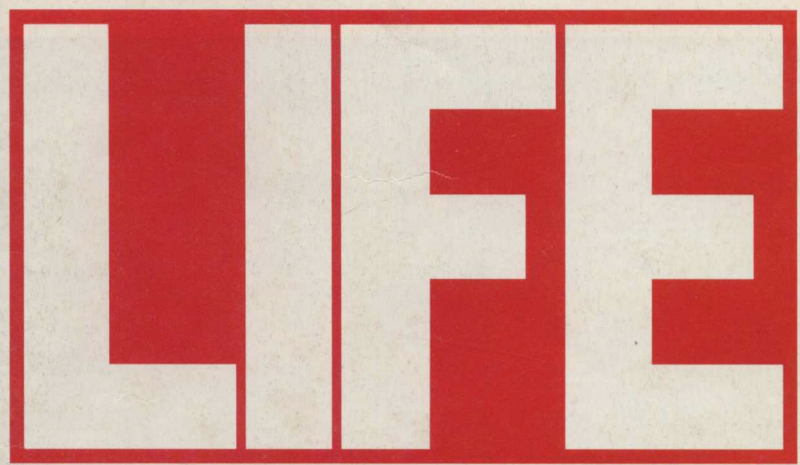


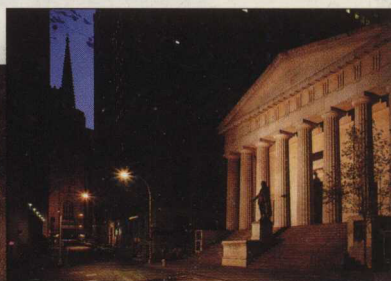
FALL SPECIAL 1991/\$3.95



The

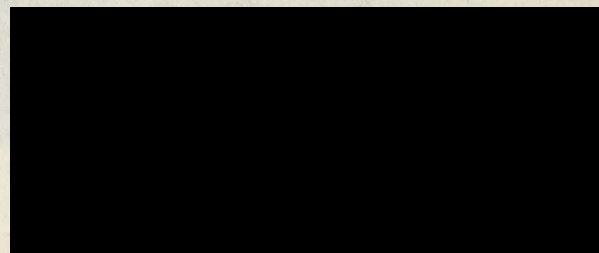
*A 200-year
history of
turbulence
and triumph*

Bill



of

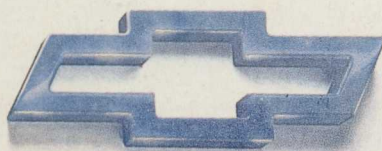
Rights



FINALLY SOMEBODY'S FOUND A WAY TO CONTROL THE WEATHER.

CHEVROLET ENGINEERING

It's designing cars to survive the real world of potholes and thunderstorms. It means cars made to steer clear of trouble. Cars prepared for surprises. More models with standard anti-lock brakes (ABS) than anyone. Cars with unsurpassed corrosion protection outside. And inside, Scotchgard™ Fabric Protector on the seats and doors. In short, it's us worrying a lot about your Chevy — so you don't have to. Chevrolet engineering — another reason why Chevys are the cars more people depend on.



THE HEARTBEAT
OF AMERICA IS
WINNING.™

LUMINA EURO SEDAN. ENGINEERED FOR THE DRIVER WHO JUST HAPPENS TO BE A PARENT.

Forget for a moment, the kids are in the backseat. It's just you, the road and a sport sedan that knows how to handle it. The crisp agility of a Corvette-inspired rear suspension.

Stabilizers

front and rear. Touring tires mounted on aluminum wheels. And, on 3/4 sedans, the response of a 200-horsepower, Multi-Port Fuel-



Injected
24-
valve
Twin

Dual Cam V6. ♦ Now about those kids. The Lumina Euro Sedan has enough room for six adults (so kids are no problem). And all that performance engineering

comes in very handy when you're passing or merging.

Should the road or the weather take a turn

for the worse,

you've also got the confidence of standard 4-wheel anti-lock brakes (ABS).

(Once you've

used them, you'll never

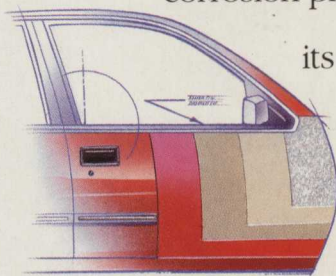


settle for anything less.)

♦ The exceptionally engineered Lumina Euro Sedan.

From its unsurpassed

corrosion protection to



its long list of thoughtful standard features,

it'll satisfy you. As a driver and a parent.



THE 1992 CHEVROLET



UMINA EURO SEDAN



Lumina Euro 3.4 Sedan shown. Chevrolet, the Chevrolet emblem, Lumina and Corvette are registered trademarks and Chevy is a trademark of the GM Corp. ©1991 GM Corp. All Rights Reserved. Buckle up, America! 



FOUNDER Henry R. Luce 1898-1967

EDITOR-IN-CHIEF Jason McManus

EDITORIAL DIRECTOR Richard B. Stolley

CORPORATE EDITOR Gilbert Rogin

TIME INC. MAGAZINES

PRESIDENT Reginald K. Brack Jr.

EXECUTIVE VICE PRESIDENTS Donald J. Barr,
Donald M. Elliman Jr., S. Christopher Meigher III,
Robert L. Miller

SENIOR VICE PRESIDENT Richard W. Angle Jr.

MANAGING EDITOR James R. Gaines

ASSISTANT MANAGING EDITORS Jay Lovinger,
Mary Youatt Steinbauer

EDITOR AT LARGE Roger Rosenblatt

DIRECTOR OF PHOTOGRAPHY Peter Howe

DIRECTOR OF DESIGN Tom Bentkowski

SENIOR EDITORS Susan Bolotin, Peter Bonventre,
David M. Friend, Stephen L. Petranek, Carrie Tuhy

NEWS EDITOR Peter Meyer

CONTRIBUTING EDITORS Brad Darraich, Lisa Grunwald,
Barbara Grizzuti Harrison, Gregory Jaynes, Tom Junod,
Jeanne Marie Laskas, Daniel Okrent, Gary Smith

CHIEF OF REPORTERS June Omura Goldberg

COPY CHIEF Paula Glatzer

WRITERS George Howe Colt, Claudia Glenn Dowling,
Cheryl McCall, Vance Muse, David Van Biema

ASSISTANT EDITORS Jane Furth, Anne Hollister,
Doris G. Kinney, Janet Mason

REPORTERS Edward Barnes, Scott Gummer,
Charles Hirshberg, Barbara Maddux,
Sasha Nyary, Deborah Rawson, Joshua R. Simon,
Denise L. Stinson

PICTURE EDITOR Barbara Baker Burrows

ASSISTANT PICTURE EDITOR Marie Schumann

PICTURE DESK Azurea Lee Dudley, Deirdre L. Wilson,
Lynne Jaeger Weinstein, Mary Shea,
Joseph Aprea, Laleli Lopez, Chris Whelan

SENIOR ART DIRECTORS Charles W. Pates, Nora Sheehan

ASSOCIATE ART DIRECTORS Mimi Park
(Special Projects), Marti Golon

ASSISTANT ART DIRECTOR Thomas F. Vincent

ART ASSISTANTS Jean Andreuzzi, Kevin Lewis

COPY DESK Eleanor Van Bellingham (Deputy),
Barry Bishin (Copy Processing Manager),
Nikki Amdur, Larry Nesbitt, Frank Perich,
Albert Rufino, Rebecca Morales

PRODUCTION Steven Bessenoff, Kathleen Burrows,
Len Lieberman, Kathy O'Shaughnessy,
Ann Jacobson Shure (Managers), Amy R. Rea,
Lorin V. Bowser, Meghan Fitzgerald, Tracy Pepsoski

FINANCIAL MANAGER Alexandra K. Nolan

ADMINISTRATION Ann Morrell,
Anne de Flumeri, Margaret Sedgwick,
Bonnie J. Smith, Evelyn L. Thompson,
David M. Fischer (Letters Department)

BUREAU CHIEFS Jim Calio (Los Angeles),
Liz Nickson (London)

SPECIAL CORRESPONDENTS Linda Gomez
(San Francisco), Jack Hayes (Midwest),
Steve Marsh (Denver)

TIME-LIFE NEWS SERVICE John F. Stacks (Chief)

EDITORIAL SERVICES Christiana Walford (Director),
Jennie Chien, Hanns Kohl, Benjamin Lightman,
Beth Bencini Zarcone

PUBLISHER Katherine M. Bonniwell

GENERAL MANAGER Daniel B. Brewster Jr.

ADVERTISING SALES DIRECTOR William P. Kupper Jr.

ASSOCIATE ADVERTISING SALES DIRECTOR
G. Lindsay Valk

MARKETING DIRECTOR Mark L. Hintsa

CONSUMER MARKETING DIRECTOR Jeffrey A. Ente

BUSINESS MANAGER Nancy J. Phillips

PROMOTION DIRECTOR Ripley Odell

PRODUCTION DIRECTOR Murray Goldwaser

EDITOR'S NOTE



Mary Steinbauer is still at the top in Greenwich Village.

As LIFE staffers put together this special issue, they soon discovered that they needed their own bill of rights—the right to work only five days a week, to not understand some knotty question of constitutional history and, most of all, to have a boss who wasn't always right. But it was a forlorn hope: "I," Mary Youatt Steinbauer joked, "am queen." It was hard to argue. With her genius for taking

a massive compilation of facts and photographs about an abstruse subject and putting them together in a way that both educates and entertains, Steinbauer has one of the finest editorial minds in the business. And since she absorbs every subject she treats, she is usually right.

"I'm just a simple girl from the Midwest," she demurs, crediting her schoolteacher mother with the line. The eldest of three girls, Mary was born in Minnesota and raised in Detroit, where she won spelling bees, sang in the church choir and discovered a passion for the cinema. That passion extended to the city where so many films seemed to be set: New York. After graduating from Wayne State University with a Phi Beta Kappa key and a master's in American history, she worked at an audiovisual firm and saved.

In 1962 she pulled up her heartland roots and moved to Manhattan to look for TV documentary work. Marking time, she visited a Time Inc. "women's" personnel officer, who suggested she apply for a job on a new Time-Life Books American history series. When Steinbauer arrived for her interview, men were setting up hors d'oeuvres and a bar in the hall. When they asked Steinbauer to move so that they could roll in the piano, she said to herself, "This looks like a good place to work." For the next dozen years she applied both historical and visual skills as a picture editor, proposing and developing such series as "The Old West" and the eight-volume "This Fabulous Century." In 1975 she got a call from LIFE, which was publishing a special U.S. Bicentennial issue. The timing was impeccable; the book division was about to announce that it was—horrors—moving out of town.

At LIFE Steinbauer has shaped stories on everything from roller coasters to JFK's assassination, but her specialty is special issues—among many, the annual Year in Pictures, LIFE's 50th anniversary issue and 1987's award-winning issue on the 200th anniversary of the Constitution. In 1985 she became assistant managing editor. "She could wrap those editorial arms around the most complex project and present it in a way that suddenly made sense," says one former boss, Editorial Director Richard B. Stolley.

Sadly for us, this special issue is Steinbauer's last; she has decided to take early retirement. Mary and art director Douglas Steinbauer will celebrate their 25th wedding anniversary in Hawaii this month, en route to New Zealand, and, upon return, will collaborate on film and book projects—something they have been wanting to do for years. Steinbauer also plans more travel and time with her friends and extended family. She'll go to the movies in the afternoon if she feels like it. And despite plans to build a cabin in Utah, when she "really" retires it will be in the place where she still believes it's all happening. She points to a framed obituary on her apartment wall whose headline reads: "James For- dyce, 82, Led Manhattan Life." Says Steinbauer, "I know they were talking about some insurance company, but I hope the same will be said of me."

Managing Editor



There's a great business mind
behind those good looks.

MAKE A GREAT

IMPRESSION WITH CAMBRIDGE PORTFOLIOS, PADFOLIOS, NOTEBOOKS, BINDERS,

PLANNERS, ENVELOPES, NOTE PADS, LETTER PADS, MEMO BOOKS, COLUMNAR

PADS,

CAMBRIDGE
businesswear



As important to the way you look as the clothes you wear.

© 1991, The Mead Corporation.



It takes all this to carry

It's late afternoon as the sun finishes another tour of duty over the Wyoming countryside. The trucks, and most of the people you see here, have just concluded the 600-mile trek from Bismarck, North Dakota. Our cargo is precious. Liberty. Freedom. And justice. We are carrying an original copy of the Bill of Rights—the single most valuable document we,

as Americans, own. For the last twelve months, we have placed this cornerstone of democracy within the reach of every American.

Casper, Wyoming, was number 38 on this 52-stop tour. And by tour's end, the document will have passed over 26,000 miles of your land and my land (and a few thou-



one piece of paper.

sand by water to Alaska and Hawaii). All fifty states. To big cities like Los Angeles and Dallas. And to smaller dots on the map like Barre, Vermont, and West Warwick, Rhode Island.

The tour ends in Richmond, Virginia, on December 15th—the actual 200th anniversary of the ratification of the Bill of Rights.

Philip Morris is grateful to all who exercised their right of

assembly and came out to share this special document. We've committed ourselves to protecting this piece of paper over the last year. But that is the least we can do.

After all, it has been protecting the rights of Americans for 200 years.



Philip Morris Companies Inc.

KRAFT GENERAL FOODS • MILLER BREWING COMPANY • PHILIP MORRIS U.S.A.



FALL SPECIAL 1991
Volume 14, Number 13

- 2 **Editor's Note**
- 9 **A Prologue**
- 10 **The 10 Amendments**
Their history, their meaning
- 32 **The Other Amendment**
The 14th adds value
- 36 **Roots & Radicals**
The struggle over passage
- 48 **The Dark Century**
by Robert Allen Rutland
- 60 **First & Foremost**
They invoked the First
- 68 **Presumed Innocent**
Oregon public defenders
- 76 **A Long Journey**
The case began on a bus and wound
up in the Supreme Court
- 85 **Law & Order**
Police and prosecutors tell how
rulings affect them
- 88 **The Case for Hate**
A burning cross becomes a test for
St. Paul, Minn.
- 92 **The Rights Stuff**
Alluring addenda about the
amendments
- 96 **The Advocates**
Robert Bork and Laurence Tribe
face off
- 100 **The Activists**
Nebraskans fight for their rights
- 106 **Just One More**
- 91 **Acknowledgments and Picture Sources**

STAFF FOR THIS ISSUE

Editor Mary Youatt Steinbauer

Picture Editor Barbara Baker Burrows

Art Director Nora Sheehan

Text Editors Claudia Glenn Dowling,
Peter Bonventre, Stephen L. Petranek

Assistant Editor Jane Furth

Assistant Picture Editor Marie Schumann

Reporters Sue Allison, Miriam Bensimhon,
Temma Ehrenfeld, Melissa Goodman, Donna Haupt,
Barbara Maddux, Sasha Nyary

Writers John Neary, Ann Bayer,
Todd Brewster, Peter Meyer

Pictures Lee Dudley, Nancy Jo Johnson,
Teresa Crawford

Copy Nikki Amdur (Chief),
Larry Nesbitt (Processing)

Art Thomas F. Vincent

Correspondents Leslie Bayor, Wendy Black,
Jane Briggs-Bunting, Laura Claverie, Liz Corcoran,
Sue Cronkite, Lianne Hart, Staci D. Kramer,
Gail Ridgwell, Merle Linda Wolin

Administration Evelyn Thompson

Editorial Interns Karla Armenoff, Walter Garschagen
And all members of the LIFE Copy and
Production departments





When a presidential nominee to the Supreme Court goes before a Senate committee for confirmation hearings, as Judge Clarence Thomas did in September, the three branches of government come together in a give-and-take that helps make democracy work. As America listens in, the subject of discussion is frequently the Bill of Rights; the prospective justice's opinions can shape the interpretation of that document for decades to come.

GOOD NEWS

50,000 Kids Get Signals Straight!

FIREMAN'S FUND INSURES THAT SCHOOL KIDS LEARN RULES OF SAFETY AT SAFETYVILLE, U.S.A.

It only takes a second for a youngster to dash into the street. But at 30 miles an hour it takes you 6 seconds to stop your car.

And that's the nightmare of every parent.

The good news is that now Fireman's Fund and other companies sponsor Safetyville, U.S.A., a village in Sacramento, California, built to 1/3 scale, complete with streets, sidewalks, traffic signals, homes and buildings, even a railroad station.

Over the past six years, 50,000 school children have graduated from Safetyville.

They've learned how to cross the street on a "fresh" green light. How to report fires using the 911 number. How to bike safely. How to avoid molestation situations. How to recognize and obey traffic signs. And other basic concepts of safety and law enforcement.

Fireman's Fund is delighted to underwrite the insurance for Safetyville.

If you're ready for some good news about your business or personal insurance, call 1-800-736-9741, ext. 16, for the name of an independent agent or broker representing Fireman's Fund.



Newest Safetyville graduates pose by 1/3-scale state capitol replica.

© 1991 Fireman's Fund Insurance Company

Fireman's Fund. We Insure Good News.



Fireman's
Fund

The Bill of Rights

The first of the 10 amendments

launches us on a journey

of self-discovery ~~~~~

by ROGER ROSENBLATT

AS FAR AS ANYONE KNOWS, HUCKLEBERRY Finn never read the First Amendment, yet he embodied it. That jerry-built, troublesome afterthought to the Constitution did not merely guarantee a range of personal freedoms; it said in effect that Americans are free to discover their moral selves—to say and write whatever we wish, within reason, and thus to realize by the exercise of that freedom who we are and might become.

All of the first 10 Amendments that constitute the Bill of Rights protect the people from the government, which is why the framers tacked it on to the Constitution. But the First Amendment has always been dearest to our hearts because it allows us to see where our hearts are located.

That is what Huck did in Mark Twain's novel. He spoke his piece and discovered who he was.

All that happened in a single famous passage in which Huck, in anguish because he is harboring the runaway slave Jim, thinks his problem through. He knows that he is breaking society's rules, and he is sure that God disapproves. He writes to Miss Watson, Jim's owner, to turn Jim in, but he cannot bring himself to mail the letter, as he recalls their adventures on the river and the kindnesses Jim showed him. Certain he'll be damned forever, he tears up the letter and says to himself: "All right, then, I'll go to hell."

That passage is both a beautiful example of free expression and a demonstration of why free expression matters. It matters, is invaluable, because it encourages character to develop. Huck had no idea what he really thought about human equality until he let his mind travel, as on a river, into the problem. He learned who he was because he was free to find out.

Where this journey of self-discovery should lead, if we are doing it right, is away from self-interest and toward some common benefit. Huck risks damnation solely because he acknowledges another person's equal worth. Today recognizing someone else's worth may entail looking into the schools, the drug clinics and the city streets—slavery taking different and more subtle forms in modern America.

But first you have to be free to take the journey. And free means ab-

solutely free; otherwise all journeys would take the same turns. The hope is that in the long run individual freedoms will produce more decent people than scoundrels.

Hope is what the First Amendment is based on, the hope that citizens, left to their own rafts and rivers, will behave well toward one another. The belief in potential human virtue underlies the whole idea of the Bill of Rights; the document is a very tough guardian of that belief. Nowadays people often confuse having rights with doing right, but the authors of the Bill of Rights saw the two applications of the word as connected. True that the original document excluded slaves from its freedoms. Yet the freedoms turned out to be stronger than the blindness of any particular era. When an American—black, yellow, female, whatever—reads the First Amendment today, it feels as if it was written for him or her alone.

In preparing this issue of LIFE on the 200th anniversary of the Bill of Rights, we rephrased the First Amendment as if it were a wholly new proposal, and took a Gallup poll to see if today's Americans would still accept it. Three quarters of the respondents approved, which may be more than approved the original. Not bad when you consider the public anguish over such issues as abortion and flag burning. It is gratifying to know that with a lack of consensus on almost everything, Americans still want their individual freedoms, to help them find their individual selves.

Downriver we ride together, as ever, free to go to hell. ☆



1. Congress shall make no law



... of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

If any single one of the first 10 amendments can be said to be the keystone to the audacious notion of a free country, it is the First. As Supreme Court Justice Benjamin N. Cardozo wrote in a 1937 opinion, free thought and speech are "the matrix, the indispensable condition, of nearly every other form of freedom." The words of the First Amendment gird Americans to the free expression and exercise of ideas, civil and religious, in speech and in print, and through peaceful demonstrations.

While the language of the body of the Constitution amounts to a handbook for government, its first 10 amendments are a charter empowering the individual—the active citizen necessary to make the new country work. The tenets of the First of this remarkable Bill of Rights were among the earliest claimed by the colonists and were considered essential to a democracy by those 18th century citizens who framed the Constitution. Religious oppression had driven many to emigrate from Europe, but it persisted in the New World, too, and it galled that in some of the colonies, taxes supported an official church. The notion of a free press was inflamed when English printers and writers who sowed discord between subjects and king were hanged, quartered or flogged, their works torched, in the 17th century. So essential was the press, said Thomas Jefferson, that if forced to choose between newspapers and a government, he would take his chances without a government.

In the 200 years we have lived under its protection, each clause of the amendment has been challenged. The Supreme Court draws and redraws the lines, balancing one right against another, serving now the government, now the individual: no multiple marriages, even for religious reasons, no political exhortations that pose a "clear and present danger" to the republic, no obscenity—"I know it when I see it," declared one justice. The Court is as mercurial as the changing climate of political thought, and there is no such thing as absolutely protected free speech, especially in times of great national stress, war or social change. Yet if the most unsettling beliefs seem to find protection in the First, it is precisely such minority views that need its shelter.

The free exchange of ideas remains open in the United States compared with most places on this earth. "When men have realized that time has upset many fighting faiths," wrote Justice Oliver Wendell Holmes Jr. in a famous 1919 dissent, "they may come to believe . . . that the best test of truth is the power of the thought to get itself accepted in the competition of the market. . . . That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment." So far, it has passed the test.

As the deadline for the outbreak of war against Iraq approached on January 15, 1991, protesters in Seattle exercised their First Amendment rights of free speech and assembly, petitioning the government to redress their grievance against the war in a demonstration at a federal building.

DAN LAMONT/MATRIX

respecting an establishment...



2. A well regulated Militia, b



... of a free State, the right of the people to keep and bear Arms, shall not be infringed.

The fusillades were still echoing in the hearts of the Revolutionaries—how could they not see a standing army as the instrument of oppression? They insisted that Americans be able to defend themselves from ambitious leaders, foreign invaders and perhaps even one another. Men who hunted with guns believed that their best protection was to form themselves into citizens' militias, ready to rise for their freedom.

Things are different today. We buy our meat in plastic packages. We hire an all-volunteer force to fight for us. The National Guard quells unrest within our borders, and the police supposedly protect us from one another. But we still have guns—some 200 million of them. They are no longer muskets but rapid-firing assault rifles and semiautomatic pistols. And the searing memories of assassinations, outbursts of racial friction, domestic violence and drug-related crime have made guns vivid symbols of all the evil of our violent era.

And so the Second Amendment has become the center of a semantics dispute. Was its intention that the people have arms just for militia service or for personal use as well? The nation's powerful gun lobby, the National Rifle Association, holds that it means the right to keep and bear arms—any arms—even in those Chicago housing projects where police are fighting to enforce a ban. Those in favor of restrictions on guns say that the second half of the Second is dependent on the first—that without a militia there is no right to keep and bear arms. Former Supreme Court Chief Justice Warren E. Burger, who supports controls on use, suggests that the amendment be read as if its first word is "because."

The courts have generally agreed that restrictions can be imposed. The precedent was set in 1939, when in *U.S. v. Miller* the Supreme Court ruled that the amendment did not protect ownership of nonmilitia-type arms—in this case, a sawed-off shotgun. Gun advocates, perhaps afraid that their cause might not find favor in the courts, instead lobby against federal gun regulations and push their cause in state legislatures and town councils, making the nation a crazy quilt of contradictory laws. In many western states, carrying a gun is still legal as long as it is visible. In some cities, like New York, ownership is restricted and permits to carry guns are tough to get. Morton Grove, Ill., in 1981 became the first town to ban handguns. But smuggling shoots enforcement as full of holes as Swiss cheese.

There are still countless unregistered weapons on sale in flea markets, at garage sales and in back alleys. Antiques collectors hoard flintlocks—still as deadly as in colonial times. And as the toll mounts past 30,000 gunshot deaths and 600,000 victims of handgun-related crimes a year, the battle over the Second Amendment will see many more casualties before there is the remotest chance of a cease-fire.

Military-style assault weapons, seized during police drug raids, line a display table at a 1989 congressional hearing about gun control. Congress's latest attempt is passage of legislation, including the Brady Bill, which mandates a national waiting period for handgun purchases.

AGENCE FRANCE PRESSE

ing necessary to the security...



3. No Soldier shall, in time of



In 1897 a cavalry troop sat at ease in their barracks at Fort Riley, Kans. Military housing has obviated the need for Americans to put up soldiers, as—willing or unwilling—people around the world have been forced to do since the dawn of history and still can be in many countries today.

... house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Hatred of the Quartering Act imposed upon the colonies by England led to the inclusion of this amendment. Housing King George's troops, the colonists felt, was an indignity and an invasion of their homes, barns, alehouses and shops. Perhaps the British themselves should try putting up an army, "quartering soldiers on butchers, bakers or other private houses," sniped Benjamin Franklin in 1765. "Parental example may provide filial obedience."

In the end, the colonists had to fight their way out of playing host to the minions of their former masters—and they bitterly feared the possibility of having to house and feed their own. "Here we may have troops in time of peace," warned Patrick Henry. "They may be billeted in any manner—to tyrannize, oppress, and crush us." Since the Constitution provided for a powerful national government, Henry said in 1788, the need for protection was greater "than ever it was in any government before."

Those dark fears have not yet materialized. The amendment has been invoked in only one serious lawsuit, brought in 1979 by striking New York prison guards protesting the occupation of their state-provided housing by the National Guard. The case was dismissed on the grounds that the state was immune to suit.

While a case based specifically on the amendment that some call a juridical fossil has never been addressed by the Supreme Court, the Third has been referred to by the Court, with findings suggesting that privacy—a concept never stated in the Constitution—is nonetheless protected. The Third is, after all, an affirmation of the sanctity of the home and a protection of property as well as a confirmation that military is subordinate to civilian authority. Justice Joseph Story wrote in 1833, "This provision speaks for itself. Its plain object is to secure the perfect enjoyment of that great right of the common law, that a man's house shall be his own castle, privileged against all civil and military intrusion." In 1961 the Court declined to decide a case about a Connecticut law banning the use of contraceptives, but Justice William O. Douglas wrote: "Can there be any doubt that a Bill of

Rights that in time of peace bars soldiers from being quartered in a home 'without the consent of the owner' should also bar the police from investigating the intimacies of the marriage relation?"

The marvelous adaptability of the Bill of Rights is its strength. Two hundred years is not time enough to explore every application, and the years to come may provide critical challenges. "The Third Amendment could, in ways that we can't even possibly predict, become relevant," says B. Carmon Hardy, a historian at California State University at Fullerton. "It remains an important shield in a world of uncertain events."

JOSEPH J. PENNELL COLLECTION, KANSAS COLLECTION, UNIVERSITY OF KANSAS LIBRARIES

peace be quartered in any...



4. The right of the people to



Two sisters huddled in their Minneapolis apartment in September 1989 as narcotics investigators, armed with a warrant, search for heroin and crack. A police informant claimed he had purchased drugs there that morning, but none were found in the raid, and the girls' father remained free.

... houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The stern protection of the Fourth Amendment sharply curtails the government's curiosity about us. The roots extend back to an era of atrocities that the Magna Carta was intended to redress, ending arrests, searches and seizures by royal whim. In the New World, searches with nonspecific warrants were, said Justice William J. Brennan Jr. in 1963, "the single immediate cause of the American Revolution."

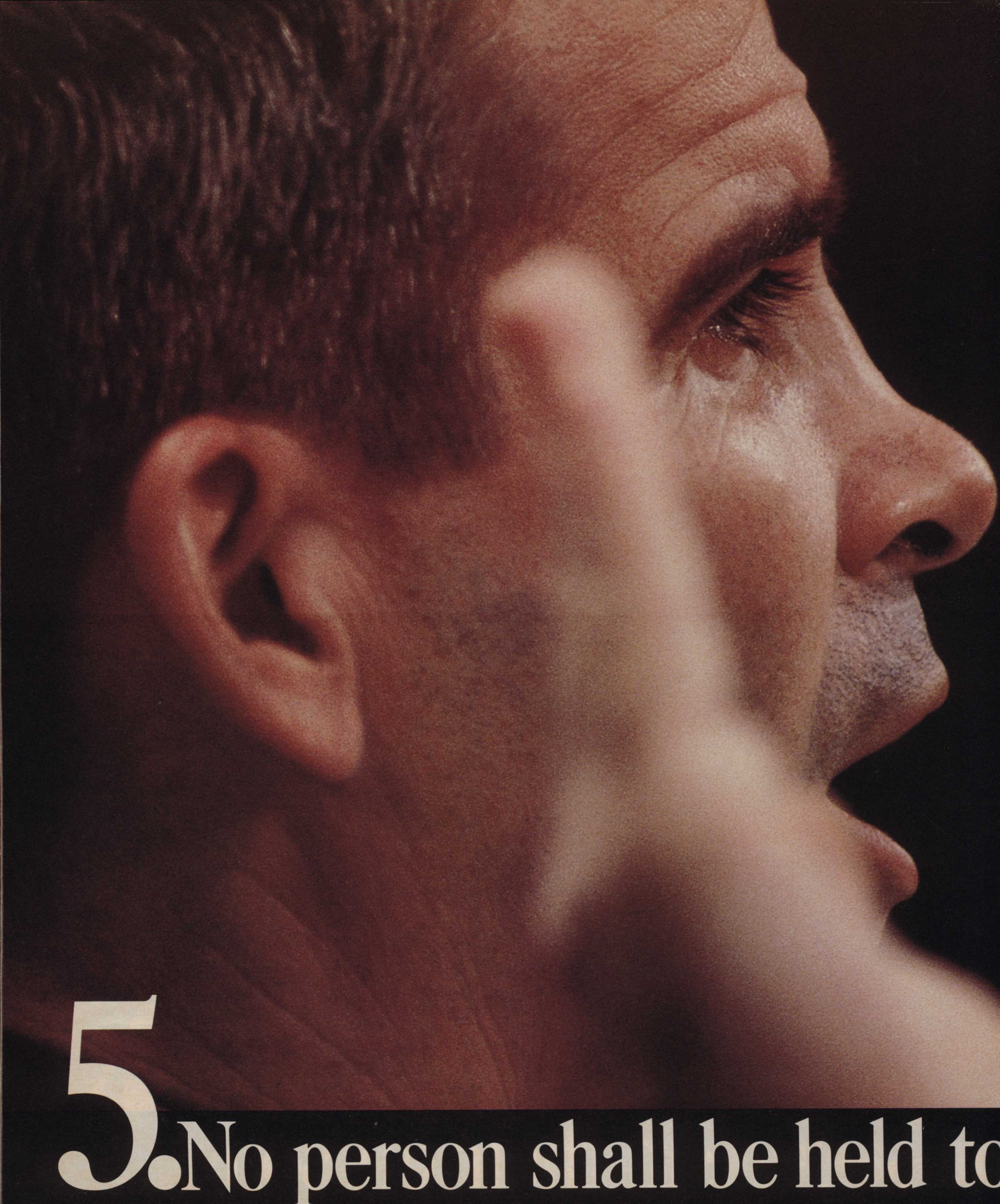
The latest round in the fight is as recent as the last drug bust, as cops and quarry haggle over whether the search was made or the warrant issued with probable cause. The high-stakes contest between prosecution and defense has intensified in recent years, as the definition of an "unreasonable" search and seizure shifts between liberal and conservative interpretations. The Supreme Court has tipped the balance in some recent cases, expanding the scope of "stop and frisk" searches by police and allowing some evidence seized without a warrant.

The Fourth is assuming a large importance in once quieter areas of American life as well. Easy electronic communication invites equally easy access to telephone, facsimile and computer records by police and prosecutors who want to reach out and indict someone. The courts flip-flop about what may be a legal seizure. In 1928's *Olmstead v. U.S.*, the Supreme Court could declare that government wiretapping to capture bootleggers was legal, deciding that conversations were not "things to be seized." But by 1967, in *Katz v. U.S.*, the Court declared eavesdropping on an accused bookmaker in a public phone booth—unless with a warrant—illegal. Then in 1979 the Court ruled that a robbery suspect had no reasonable expectation of keeping private the phone numbers he called.

As new technologies unimagined by the framers are accepted in everyday life, the dilemmas pile up. Can police roadblock cars to screen for drunk drivers? In 1990 the Supreme Court said yes. Does state-mandated urinalysis for drug testing amount to reasonable search and seizure? In 1989 the Court upheld one drug testing program on railroad employees who were involved in train accidents and another on customs workers responsible for interdiction of drugs. Can the state routinely test prisoners, Peace Corps workers, the military for AIDS? Can DNA "fingerprinting" be used as evidence? These and all manner of taunting new questions are facing us. In coming years the Fourth Amendment will have a big role in the theater of the courtroom as the nation realizes just how precious—and vulnerable—is the promise of security from invasion by the state.

RICHARD SENNOTT/STAR TRIBUNE

be secure in their persons....



5. No person shall be held to

... otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

This remarkably sweeping declaration amounts to an individual's protection from the vast prosecutorial and condemnatory power of the state. Authors of the Constitution, themselves only recently freed subjects of a heavy-handed empire, suspected that all governments were capable of the worst. They especially feared the state's terrible power to throw them into dungeons and forget them, to torture them into "confessions"—suspected heretics in the 17th century were put to the rack and had their fingernails torn out—or to judge them summarily, with no charges and no witnesses, and seize their lands and possessions.

So as a kind of incantation against despotism, the framers employed words echoing English common law, in which a grand jury, among the earliest European tribunals, had to determine whether there was reason to prosecute a crime before a petit jury decided guilt or innocence. And, by not allowing people to bear witness against themselves, they reaffirmed such formative documents as the Magna Carta, accepted by King John in 1215, which endeavored to protect the innocent. The ancient phrase "due process" was defined in the 1600s by English Justice Sir Edward Coke as "the law of the land." Strictly, due process means that proper procedures of law must be followed. But over the centuries it has also come to mean not just playing by the rules but actively ensuring liberty and justice.

The Fifth is thus at the very heart of the Bill of Rights—"securities for liberty," framer James Madison called them, which would guard against "the body of the people operating by the majority against the minority." Procedures may change with prevailing opinion, but the principle remains the same: the protection of an individual accused of crime. Admittedly, it may be hard to respect an individual's right to due process in a precinct squad room—especially when the individual in question is a self-confessed murderer whose confession will be invalidated if he can prove he was coerced, thereby setting him free. That happened in the case of Danny Escobedo in 1964. And in 1966 rapist Ernesto Miranda was released because he had not been told that he had a right to remain silent. Since then every officer making a criminal arrest has to read four "Miranda warnings" listing the rights of the accused.

But if critics call such decisions shackling the police, supporters of the Bill of Rights call them the price we pay for freedom. "The privilege against self-incrimination is one of the great landmarks in man's struggle to make himself civilized," said former Harvard Law School dean Erwin Griswold. "The Fifth is a lone sure rock in time of storm... a symbol of the ultimate moral sense of the community, upholding the best in us."

"Taking the Fifth," Lt. Col. Oliver North (left, in 1987) refused to testify to Congress about the Iran-contra affair until he got assurance that what he said could not be used to incriminate him. Later, charges were dropped when prosecutors couldn't prove that North's testimony wasn't used against him.

KENNETH JARECKE/CONTACT PRESS IMAGES

answer for a capital, or...



6. In all criminal prosecutions.



In 1948, in an Indianapolis courtroom, seven housewives, a truck farmer, three laborers and a law student sat in the jury box (far left) to hear accused safecracker Clifton Bowers (on witness stand). After testimony, the jury pronounced the defendant "guilty as charged."

... right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

The elegant rules of engagement governing the fierce contest between prosecutor and accused have evolved over centuries and, indeed, continue to evolve. Rooted in English common law, each part of the Sixth Amendment shields those accused of crime.

The lengthy interrogations and secret inquiries colonists suffered under King George III led to the guarantee of a speedy and public trial—although today that may allow as long as eight years between indictment and arrest, if a pending Supreme Court case, *Doggett v. U.S.*, goes against an accused cocaine smuggler.

But perhaps the most venerable tradition, dating back to the 11th century, is that of an impartial petit jury of freemen. In 18th century America, women and blacks were ineligible for jury duty, as were tavern keepers, constables, surveyors and millers, who were considered susceptible to bribery. Today aliens, non-English-speakers, convicted felons and the insane are disqualified. Juries, classically composed of 12 members, represent a cross section of the local community. A local trial also makes it easier to gather witnesses, and for the defendant to be confronted by unfavorable witnesses. When pretrial publicity makes it difficult to select unbiased jurors, a trial may be held outside the district where the crime was committed.

The issues are agonizingly important, seldom clear-cut. In 1988 an accused sex offender convinced the Supreme Court that his trial was unconstitutional because, when two children testified against him from behind a screen, he had been unable to confront the witnesses. But another accused child molester's similar appeal, that allowing a witness to testify from another room implied a presumption of guilt, was denied in 1990.

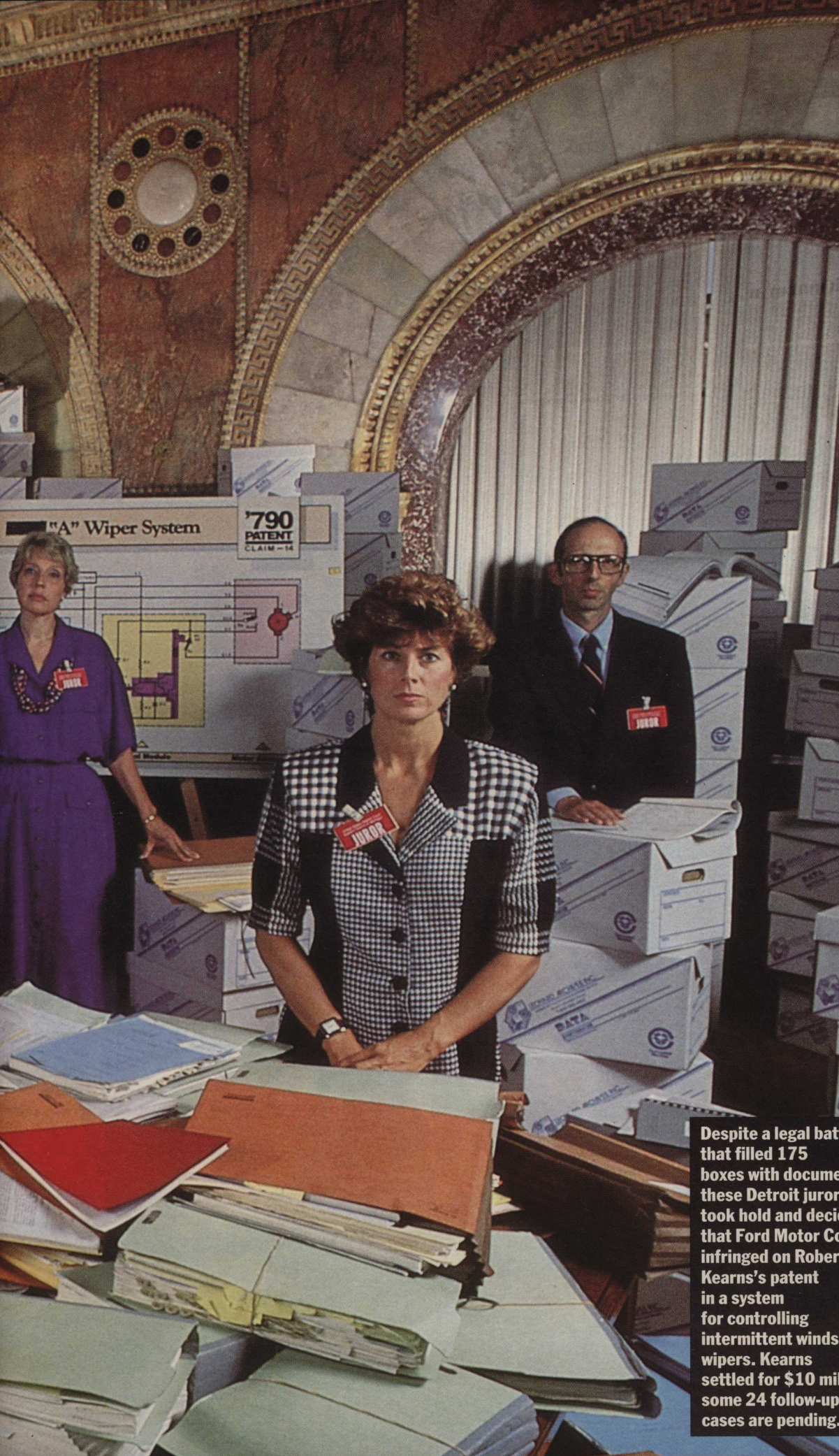
The last clause of the amendment provides what one Supreme Court justice, ruling in 1932's notorious "Scottsboro boys" rape case, called "a guiding hand." In that case, *Powell v. Alabama*, the Court extended the right to free counsel to those accused not only of federal but of state capital crimes. Today people accused of most crimes are entitled to legal guidance from the day of arrest through trial.

Imperfect and evolving though it may be, the trial process remains the best device our society has for determining guilt. "Why do we love this trial by jury?" Patrick Henry intoned 200 years ago. His reason remains ringingly true today: "It prevents the hand of oppression from cutting you off."

the accused shall enjoy the...



7. In Suits at common law, wh



... shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of common law.

The complexity of many civil clashes between corporations battling through thickets of trade over patents, scientific and medical procedures and the jungle of international finance has tangled many courtrooms with jargon. Originally, the Seventh Amendment confirmed the common law practice of having juries settle disputes between individuals. The cutoff of \$20—or about 40 days' wages in 1791—was meant to eliminate less important cases, which could be settled by judges alone without calling in a jury. Trial is not required in all state civil cases today, but it still is in the federal courts unless both parties waive the right. During antitrust suits in the 1970s, IBM and other companies argued that the Seventh does not actually require a jury in complex civil cases, but higher court decisions have been split on the issue.

In today's megatrials, jurors, who must come to a unanimous decision, are oftentimes bewildered. When in 1984 tobacco giant Liggett Group Inc. sued Brown & Williamson in a \$300 million dispute about the pricing of generic cigarettes, a jury consisting of a millworker, a janitor, a receptionist, a furniture maker, a nurse's aide and a housewife was required to sit through more than eight months of testimony on issues like "average variable cost determinations." Said former Chief Justice Burger, "It borders on cruelty to draft people to sit for long periods of time trying to cope with issues largely beyond their grasp."

Critics even claim that the inability of some jurors—who, according to one Stanford Law School professor, are often "the old, the jobless and the poor"—to understand issues in civil cases is a deprivation of due process: A fair trial is not taking place. "The jury system is a tremendous exercise in participatory democracy," counters Harvard Law School professor Arthur Miller. "For us to say we are going to exclude complex commercial cases because we're smarter than ordinary people is a mistake."

Many states select "blue ribbon" juries, chosen for their expertise, but the federal government so far has not. Nobody has yet proposed paying jurors more than the average \$34 a day to attract a knowledgeable group. Nor are there any proposals under consideration to pay lawyers, who have a billion-dollar industry in fees from civil cases, as little as jurors to encourage shorter trials. But courtroom reforms, such as avoiding jargon, providing legal definitions in writing and letting the jury take notes, are being considered by courts and lawyers' associations. Pesky and troublesome as the Seventh Amendment is, few have suggested repealing it. That, said one critic, Erwin Griswold, would be "politically infeasible. The ethos of a jury is very deep-seated in America."

Despite a legal battle that filled 175 boxes with documents, these Detroit jurors took hold and decided that Ford Motor Co. had infringed on Robert Kearns's patent in a system for controlling intermittent windshield wipers. Kearns settled for \$10 million; some 24 follow-up cases are pending.

ere the value in controversy...



8. Excessive bail shall not be

Start a new holiday tradition.

Give **LIFE**

Delight someone special with a year-long gift of LIFE. You'll save 32%* off the cover price. And you'll receive the LIFE 1992 Calendar filled with unforgettable photos—FREE.

Send a year-long gift of LIFE (14 issues) to:

Name (please print)

Address Apt. No.

City State Zip

Send FREE Gift, gift card and bill to me:

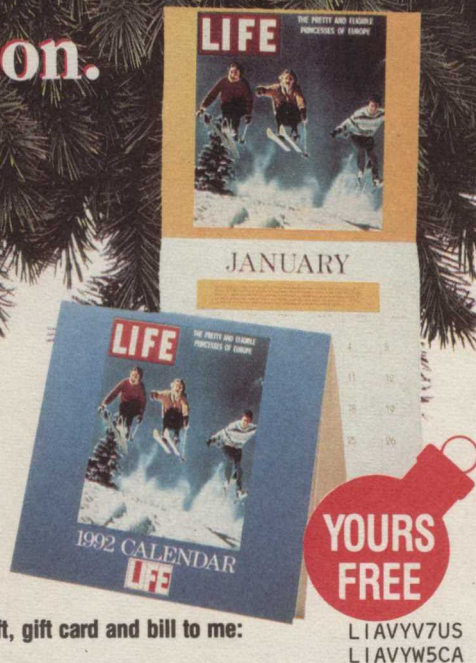
Name (please print)

Address Apt. No.

City State Zip

☐ Bill me in 3 monthly installments of \$9.99 each. ☐ Full payment of \$29.97 is enclosed.

In Canada: 14 issues/\$37.47, subject to GST. *LIFE's annual cover price: 14 issues/\$44.30.





JANUARY



FREE
with your paid
subscription



NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

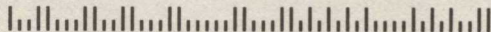
BUSINESS REPLY MAIL

FIRST CLASS MAIL PERMIT NO. 22, TAMPA FL

POSTAGE WILL BE PAID BY ADDRESSEE



PO BOX 61592
TAMPA FL 33661-1592





... imposed, nor cruel and unusual punishments inflicted.

The laws on which the Eighth Amendment is based, notably the 1689 English Bill of Rights, were not just fancy language to be carved on the lintels of courthouses but barometers monitoring the atmosphere of freedom. In the air surrounding several amendments is the notion that one is presumed innocent until proven guilty. Bail is insurance that an innocent person remain free until judgment is passed; "excessive" bail, the Supreme Court ruled in 1951, is any amount more than that considered necessary to make sure someone shows up for trial.

Once found guilty, a convicted criminal may be fined or otherwise punished. *Commentaries*, the four-volume handbook written in the 1760s by English jurist Sir William Blackstone, covered a list of permissible sentences from "embowelling alive, beheading, and quartering" for treason to the slitting of nostrils for minor crimes. When the Bill of Rights was debated, New Hampshire's Samuel Livermore worried, "Villains often deserve whipping, and perhaps having their ears cut off; but are we in future to be prevented from inflicting these punishments because they are cruel?"

Standards of what constitutes cruelty have become more humane: In 1910 the Supreme Court decided that 15 years of hard labor and a fine was too cruel a punishment for falsifying records; 1958 Court justices ruled that expatriation for wartime desertion was cruel; and in 1962 it was judged both cruel and unusual for California to imprison drug addicts. In 1972's *Furman v. Georgia*, the Court put a temporary stop to the death penalty. The reason: Sentences were not only inhumane but often imposed in a random, or worse, racially biased fashion. "The calculated killing of a human being by the State involves a denial of the executed person's humanity," concurred Justice Brennan. States unplugged their electric chairs while devising new judicial paths, like separate sentencing hearings, to make them acceptable to the high court. And in 1976, in *Gregg v. Georgia*, the Court again permitted execution, so long as judge and jury had considered a murderer's character and factors that pushed the killing up the atrocity scale.

This year the Court overturned a 1987 precedent and permitted testimony about the impact of a crime on the victim's family to be considered in sentencing. At the same time, a Michigan sentence of life without parole for possessing 672 grams of cocaine was found allowable—"unusual," but not cruel. And, in another get-tough move, the Court decreed that no longer could prisoners file endless strings of habeas corpus petitions claiming they are being held unconstitutionally. So many petitions, said the Court, slow the wheels of justice and delay executions. The decision leaves 2,504 on death row—and humanity awaiting a time when both murderers and the state will find solutions other than killing.

This photograph, possibly of a test, was taken in Sing Sing Prison about 1910. Despite concluding in 1972 that "Death is fatally offensive to human dignity," the Supreme Court ruled in 1976 that, with proper procedures, it was permissible for the state to demand payment of the ultimate penalty.

required, nor excessive fines...



9. The enumeration in the Co



When this Miami family was photographed, each in his or her private space, it was 1948. It would be 1965 before the Supreme Court found a right of privacy in the Ninth Amendment. Just which aspects of life and what amendments protect them is the subject still in contention.

... shall not be construed to deny or disparage others retained by the people.

One of the strongest objections to the Bill of Rights was that, by defining and enumerating certain rights, it implied that people retained no others. James Madison, trying to persuade Congress to pass the Bill of Rights, said, "This is one of the most plausible arguments I have ever heard urged against the admission of a bill of rights into this system; but, I conceive, that it may be guarded against. I have attempted it, as gentlemen may see." And so he introduced a resolution that became the Ninth Amendment.

The Ninth has begun to be invoked only recently as a kind of all-purpose lifeboat in which litigants can hope to reach whatever safe harbor they seek. This capaciousness makes the amendment a hot topic at scholarly conventions—and is tempting lawyers to unlimber it in court battles. Though cited in footnotes and opinions, no Supreme Court case yet has been decided solely on its basis. A draft protester claimed that the Ninth guaranteed his right to his own life in a 1970 case heard by U.S. District Court in Pennsylvania. He lost. In 1986's *Bowers v. Hardwick*, a Georgia man, accused of sodomy in his home, won an appeal based in part on right to privacy in the Ninth, but he lost in the Supreme Court, 5-4. After his retirement, Justice Lewis F. Powell Jr. told a group of law students that he regretted his decision against the gay man: "I probably made a mistake."

Still, the Ninth Amendment has been most successfully used to bolster a right of privacy. That concept was spelled out as long ago as 1890 by future Justice Louis D. Brandeis and Samuel Warren in a *Harvard Law Review* article. But the Ninth wasn't cited as its guarantor until 1965, when, in *Griswold v. Connecticut*, the legality of distributing contraceptives to married couples was again tested. Justice Arthur J. Goldberg, in a concurring opinion, said that the Ninth protected privacy, and in the majority decision Justice Douglas agreed, finding privacy not just in the Ninth—but in the First, Third, Fourth and Fifth as well. The best-known case to cite the amendment was *Roe v. Wade*, which legalized abortion in 1973. Though the ruling was based on the 14th Amendment, in a concurring opinion Douglas called the Ninth a protective mantle guarding "freedom of choice in the basic decisions of one's life respecting marriage, divorce, procreation, contraception, and the education and upbringing of children."

How to interpret such an amorphous mandate? Conservatives claim that legislatures, not judges, are the real courts of appeal. But liberals feel that the Constitution must keep pace with the times, and so must the courts. Within the shadow of the Ninth lie rights that the framers had not thought to enumerate, said Douglas. Among them, said the fisherman and outdoorsman: "freedom to walk, stroll, or loaf."

stitution of certain rights...



10. The powers not delega



... the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

During the summer of 1789, as Congress debated the amendments, Samuel Adams was so impressed that he dashed off a letter. Now, Adams enthused, the "People may clearly see the distinction, for there is a distinction, between the *federal* Powers vested in Congress, and the *sovereign* Authority belonging to the several States, which is the Palladium of the private, and personal rights of the Citizens." Adams believed that diverse constituencies were best regulated locally. As he wrote in another letter, people "of different Education and Manners, and posset of different Habits & Feelings under one consolidated Governmnt. can not long remain free."

The fear of centralized might had impelled the ex-colonists in 1781 to ratify their first governmental charter in the form of the Articles of Confederation, a compact that each state would retain "its sovereignty, freedom and independence, and every Power, Jurisdiction and Right, which is not by this confederation expressly delegated to the United States." These articles left the national government too weak to function efficiently. But in the new Constitution, Antifederalists wanted assurance that the states would not be obliterated. "There can be no harm in making such a declaration," said Madison. But he argued against using the words "*expressly* delegated," saying government needed flexibility.

The challenge has been to keep the balance. Many of the laws that most affect us—about marriage, inheritance, schools, welfare, business, crime, zoning, drinking and driving ages—vary depending on where we live. When in conflict with federal laws, they become a matter for the Supreme Court. Justice Holmes declared the tug-of-war between the states and Washington a wash. "This is not a controversy between equals," Holmes said in 1925, of a clash between the federal government, which regulates commerce and navigation, and Chicago, which was accused of stealing Lake Michigan water. The 10th has also been invoked—unsuccessfully—by segregationists seeking to interpose their racism between blacks and federal civil rights laws. And it has been cited by states wishing to pay their employees less than the federal minimum

In 1916 Congress banned the interstate trade of goods made by businesses that used child labor, like the New England mill where this girl worked in 1909. The Supreme Court struck down the law in 1918, ruling that the power to regulate local industry was reserved to the states under the 10th Amendment.

wage. Recently, however, the 10th has been seen as a bulwark safeguarding the rights of states to decide issues like the death penalty, abortion and the right to die.

Whatever power decides them, these matters touch us all. As if to underline what the Bill of Rights is all about, the final words of the last amendment, added to the original draft by the Senate, are the same as the opening to the Constitution: the people. ☆

ed to the United States by...

What we're
building here is
confidence.

The New Elantra.

We started with a new factory. Precision robotics. Laser alignment stations. And Germany's most sophisticated paint system. (A meticulous, twenty-step process.)

But we didn't stop there. Having built an exceptionally solid sedan, we decided to build owner confidence as well. So for two years we'll service your new Elantra for you. For nothing. About all you'll pay for is the gas.*



*Includes all scheduled maintenance for 2 years/24,000 miles. Tires covered by manufacturer's warranty. Excludes items and

Imagine that. Whatever needs to be done, we'll do. You just come pick up your car. We'll pick up the tab. Of course, this is over and above our three year bumper-to-bumper warranty as well as our five year powertrain warranty.**

What else does the Elantra offer you for a starting price of just \$8,995?† A 16-valve fuel-injected

DOHC engine. A nimble multi-link suspension. An incredibly spacious interior. Ventilated front disc brakes. Power steering. And so much more we could write a book.

Which, of course, we have. Call 800-826-CARS for a free brochure. We're confident you'll find what you are looking for.

HYUNDAI



Hyundai. Yes, Hyundai.

The Other Amendment

Why is the 14th important to the Bill of Rights?

SECTION I: ALL PERSONS BORN or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The first and fundamental tenet of the 14th Amendment makes sure that the most basic rights of American citizens won't be trampled on by state governments. And since first enacted by Congress in 1868 to ensure that the rights of newly freed slaves would be respected by the states, the 14th Amendment has become a powerful, multipurpose legal tool—still hotly debated—that is often the most vital link Americans have to the Bill of Rights. As remarkable as it may seem today, the guarantees of the first 10 amendments were written only to protect against actions by the federal government, despite James Madison's warnings that "it was equally necessary that [essential rights] be secured against the State Governments." Many of the states already had their own bills of rights, and the founders were more fearful of central authority than that of the states.

Even after the Civil War played to its bloody end, and the 14th Amendment was adopted, strongly held and prickly traditions of states' rights kept the amendment—and the Bill of Rights—at bay. In the late 19th century (see page 48), Justice John Marshall Harlan, called an "eccentric" by a later Supreme Court justice, was a lonely advocate of total incorporation, more than once arguing,

as he did in an 1884 dissent, that the due process clause of the 14th Amendment dictates that all of the personal liberties and protections of the federal Bill of Rights apply to the states.

Not until 1925 did the tide begin to turn. In *Gitlow v. New York*, the Court opened the floodgates of incorporation: "Freedom of speech and of the press," wrote Justice Edward T. Sanford for the majority, "which are protected by the First Amendment from abridgment by Congress—are among the fundamental personal rights and 'liberties' protected by the due process clause of the Fourteenth Amendment from impairment by the States."

The *Gitlow* ruling (see page 61) was soon followed by a series of Supreme Court deci-

ver Wendell Holmes Jr. had suggested his own test of whether a state violated due process: Does the state action "make you vomit"?)

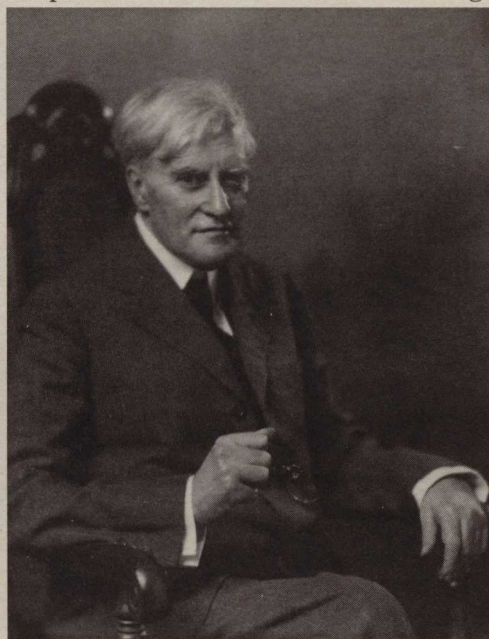
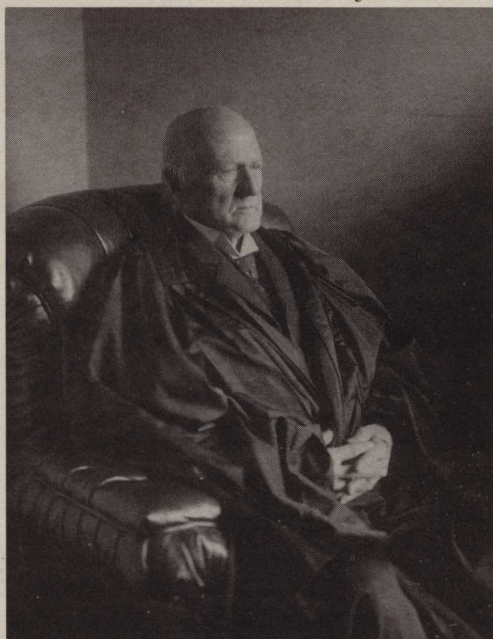
Over the next 30 years, in a series of landmark decisions, the Court continued to extend the reach of the "citizens' rights" amendment to include Fourth Amendment protections against unreasonable search and seizure, Fifth Amendment protections against double jeopardy and self-incrimination, Sixth Amendment rights to counsel, a public trial and impartial jury, and Eighth Amendment prohibitions on cruel and unusual punishments, among others.

Still not incorporated under its wide umbrella are the Second and Third Amendments, the Fifth's right to a grand jury, the Seventh's right to jury trials in civil cases and the Eighth's prohibition on excessive bail. But these are considered minor omissions in the country's seemingly inexorable passage to judicial support of personal liberties. It is now accepted that states may grant greater rights than the federal Bill of Rights, but never less—a testament to the long and difficult road traveled by the 14th Amendment.

In fact, this freight train of an amendment goes beyond the Bill of Rights. Its equal protection clause was the lever with which the Court outlawed segregation in *Brown v. Board of Education* in 1954. And in 1973 its due process guarantee of

personal liberty was invoked in the landmark abortion rights case of *Roe v. Wade*. And when an abortion case is next argued before the nine justices—very soon, Court observers believe—it probably will be decided on 14th Amendment turf.

Whether its authors intended it or whether they didn't, the 14th Amendment now incorporates some of those rights listed by James Madison—whose own amendment proposal to protect citizens from the states was killed by the Senate in 1789—and enables the Bill of Rights to guarantee all of us, at last, protection under one law of the land. ☆



Justices Harlan (left), in the 19th century, and Cardozo, in the 20th, split on incorporation.

sions incorporating the rights to counsel in capital crimes, to religious freedom and to freedom of assembly—a piecemeal nationalization of rights eventually articulated in a 1937 decision introducing the notion of an honor roll of superior rights.

Writing for the majority in *Palko v. Connecticut*, Justice Benjamin N. Cardozo declared the need to distinguish between those rights that were "of the very essence of a scheme of ordered liberty" and those without which "justice would not perish." The right to free speech qualifies, explained Cardozo; a grand jury indictment would not. (Justice Oli-

CHEW THE RIGHT THING



If your kids love the taste of bubble gum, they'll love creamy new Del Monte Bubble Gum Pudding. And so will you. Because it's a wholesome snack made with skim milk. Also try new Chocolate Peanut Butter Pudding. They'll make everybody happy. And they're only from Del Monte.

**WE GROW
BETTER SNACKS**



Power tools for the mind.

If you want to do a job right, you need the right tools. Fortunately, there are no tools more perfect for communicating, creating and computing than Smith Corona typewriters, personal word processors and personal computers.

Every feature is designed to help you, not confuse you. Fear of technology is replaced by the freedom to think.

And with that freedom, you'll find that suddenly writing becomes easier. Work becomes more enjoyable. Your brain shifts into high gear.

So if you want to turn on your mind, the answer is exceedingly simple. Just turn on a Smith Corona.

For more information on these products, write to Smith Corona Corporation, 65 Locust Avenue, New Canaan, CT 06840 or Smith Corona Canada, 440 Tapscott Road, Scarborough, Ontario, Canada M1B 1Y4.





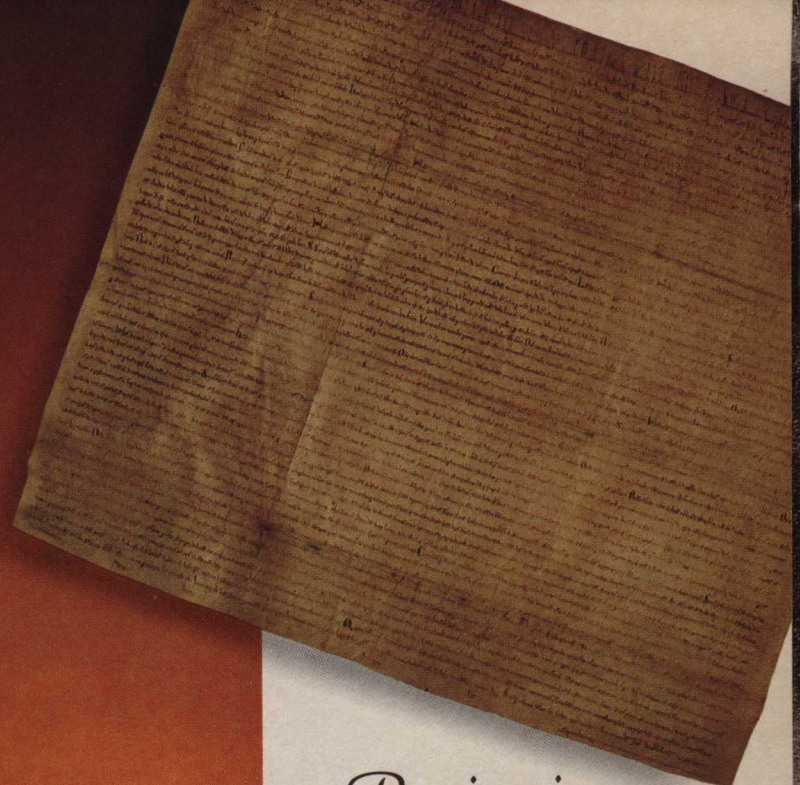
PERSONAL COMPUTERS TYPEWRITERS PERSONAL WORD PROCESSORS PERSONAL COMPUTERS **TOOLS FOR THOUGHT™**

Roots & Radicals

*~ The Magna Carta turned out
to be just the first chapter in
a saga that spanned six centuries*

TEXT: JOHN NEARY

REPORTING: JANE FURTH



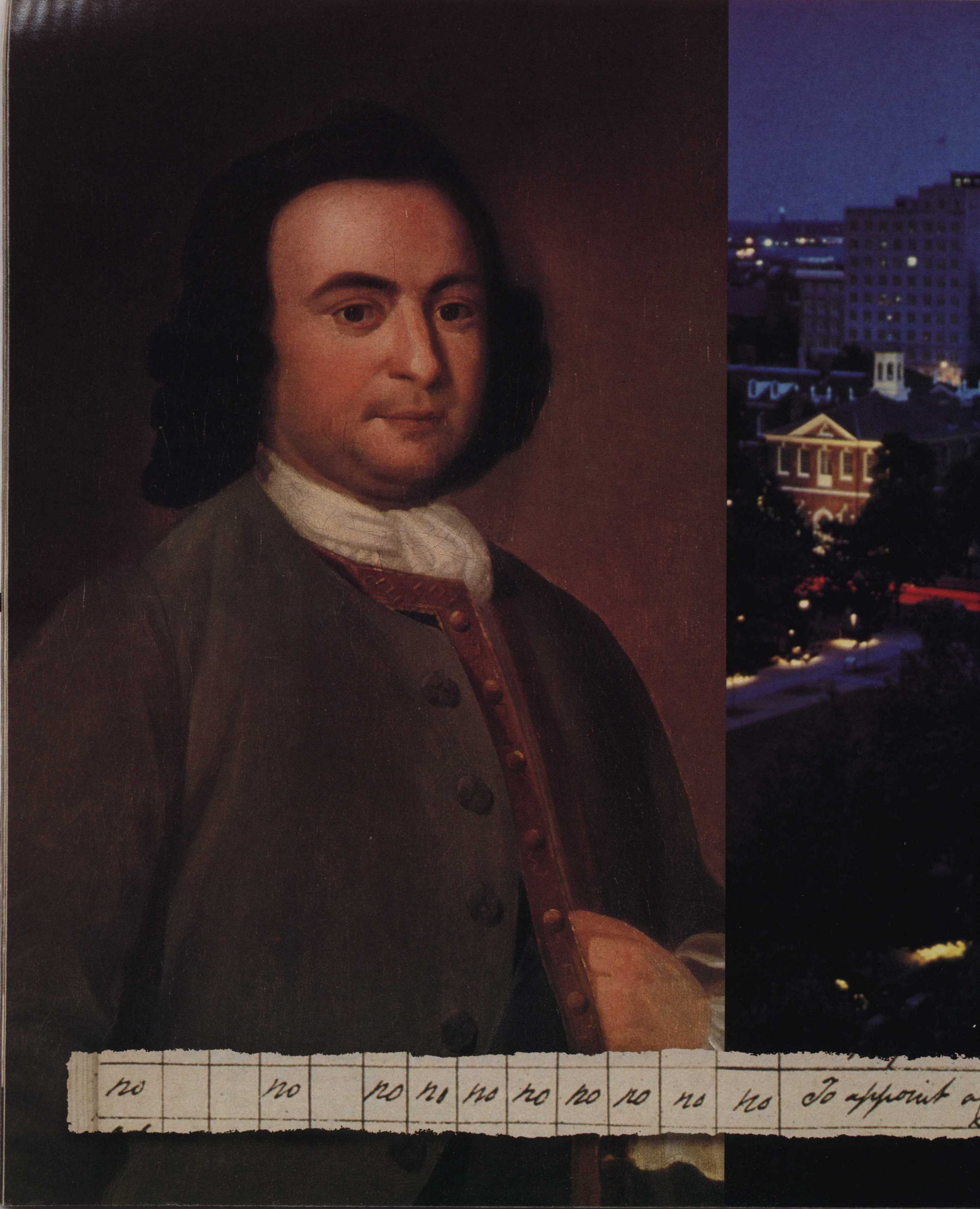
Beginnings

HISTORY does not tell us if King John was able to read the blizzard of medieval Latin script the angry barons placed before him that June 15 in 1215. His astonished rage when he first heard of this litany of demands is known, however: "Why don't they ask for my kingdom!" In the bargain John struck with his barons that day at Runnymede, recorded for the ages in the Magna Carta, the dread royal prerogative—the kingly right to do *anything*—was circumscribed in elegant and precise terms. Its 39th article defined the feudal relationship between king and liege men: "No free man shall be taken, imprisoned, disseised, outlawed, banished, or in any way destroyed, nor will We proceed against or prosecute him except by the lawful judgment of his peers and by the law of the land."

DENIS VAUGH

Behind this language lay a force that through the centuries inspired other English documents of liberty containing such basic notions of freedom as due process, jury trial and the concept of a rule of law. The settlers of America brought those bold ideas across the Atlantic with them—and strove to include them in our country's founding charter.

The meadow at Runnymede was neutral territory—between Windsor and Staines—for King John and his barons as they debated the terms of the Magna Carta (top).



no

no

no

no

no

no

no

no

no

no

To appoint a



Constitution

HE'D JUST AS soon chop off his right hand, said Virginia planter George Mason in 1787, "than put it to the Constitution as it now stands." For one thing, Mason insisted, the document lacked adequate safeguards against the very government it was setting up. Such a "Bill of Rights," he said, "would give great quiet to the people." He could draw one up, Mason told the delegates, sweltering inside the Pennsylvania State House (now Independence Hall) in Philadelphia and loath to spend more time debating, "in a few hours."

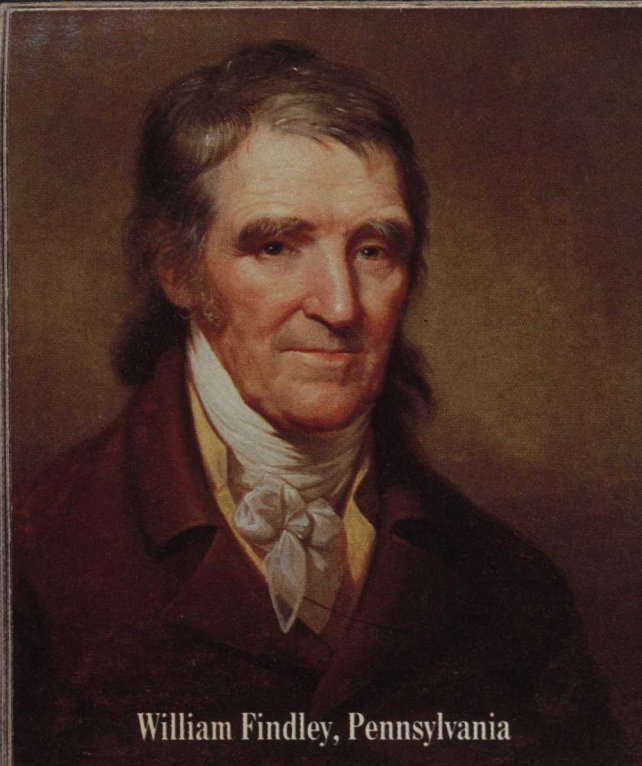
Mason knew he could pull off that audacious promise because he had been, in June 1776, the principal author of the first state bill of rights, which served as a model for all the rest. Called the Virginia Declaration of Rights, it is likely to have influenced Thomas Jefferson when he wrote the Declaration of Independence. A capable pragmatist, Mason was determined not to endure another tyranny. His Virginia declaration stated that government got its power from the people, who had the right to revolt, to majority rule, a separation of powers, a military under civil rule. Mason's litany of personal rights echoed the beliefs of his fellow Americans that in the New World they had lost none of their rights as Englishmen (many of which had already been included in colonial charters). "We seem to have been treading upon enchanted ground," Mason marveled, looking back at what he had helped produce in Virginia. But in Philadelphia in the

summer of 1787 the spell ended. Mason's fellow delegates, as noted in the convention's record, unanimously rejected his call for a bill of rights. And so Mason made good on his threat, refusing (along with Elbridge Gerry of Massachusetts and Edmund Randolph of Virginia) to sign the Constitution, thereby signaling the struggle over ratification that lay ahead.

George Mason drafted the Virginia Declaration of Rights and encouraged the motion—unanimously defeated—to discuss a bill of rights at the Constitutional Convention in Philadelphia.

Committee to prepare a Bill of Rights

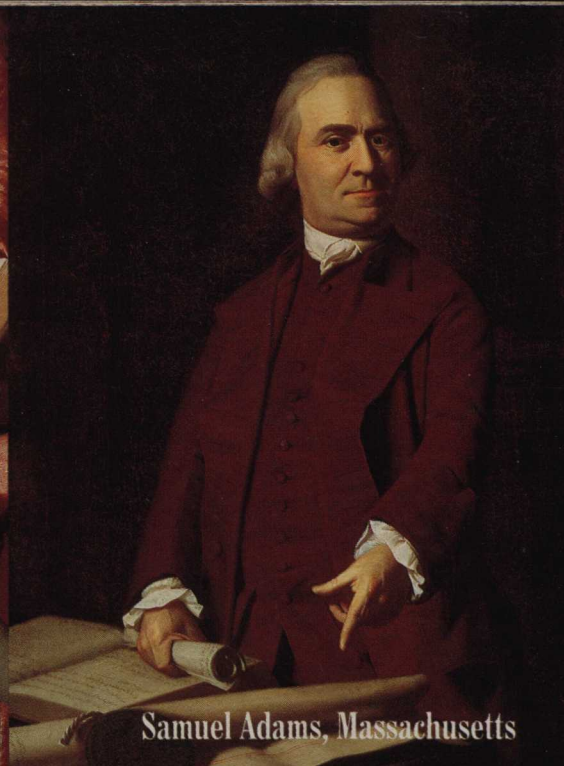
10/10



William Findley, Pennsylvania



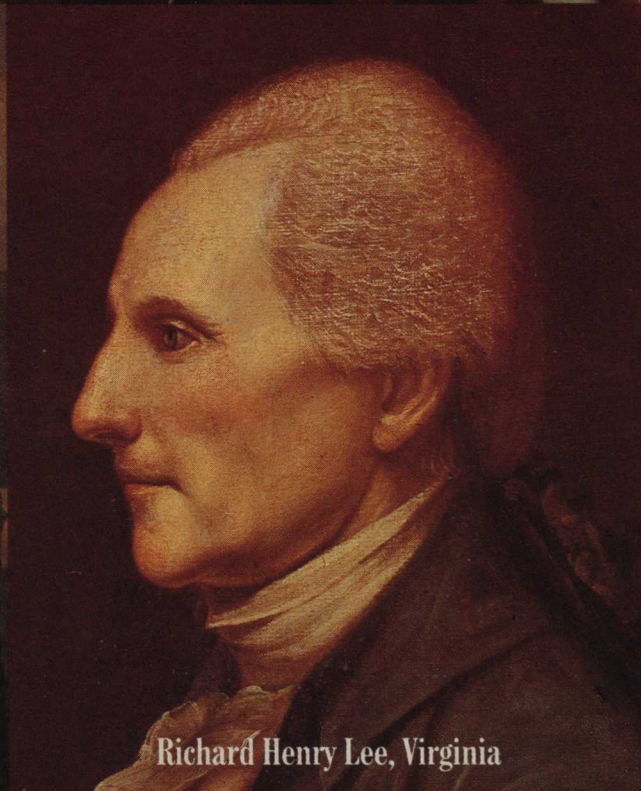
John Hancock, Massachusetts



Samuel Adams, Massachusetts



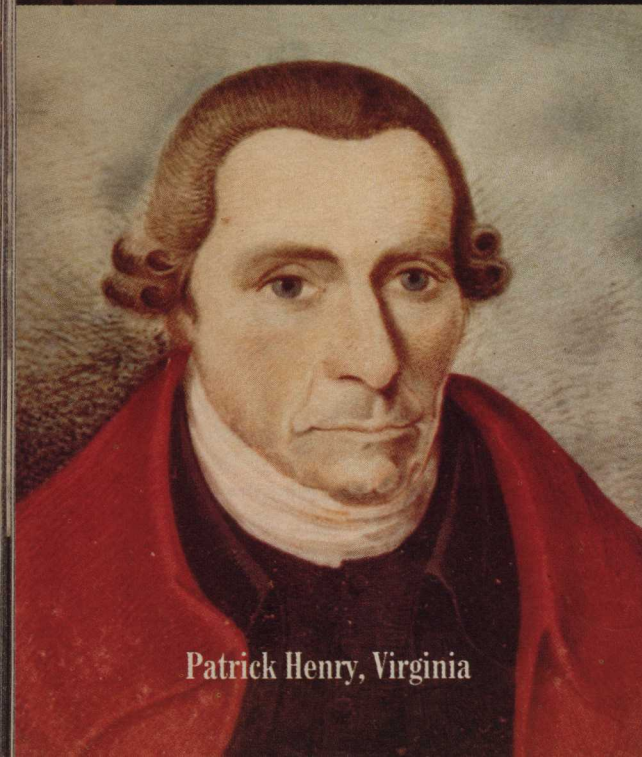
William Paca, Maryland



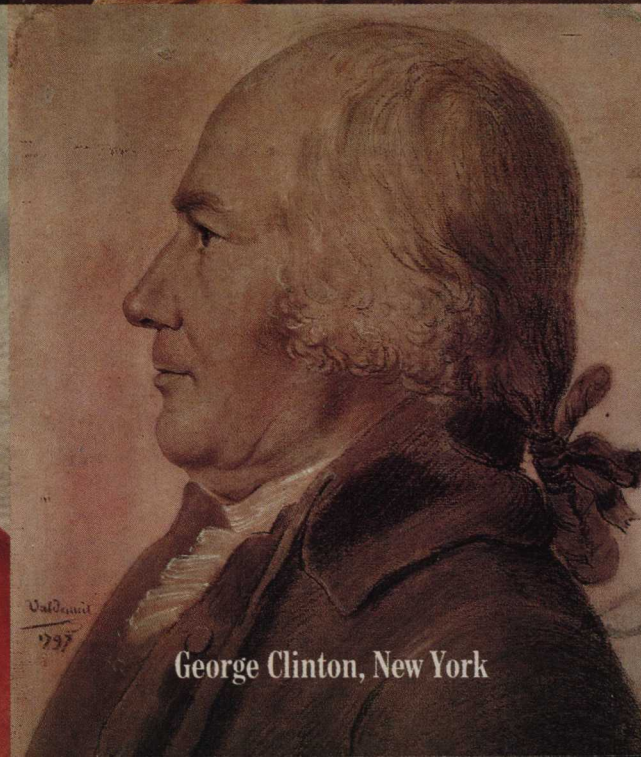
Richard Henry Lee, Virginia



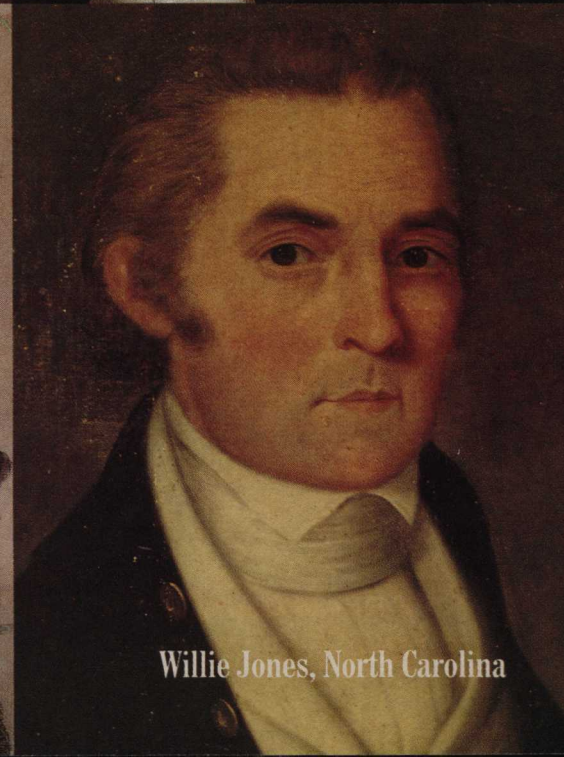
Edmund Randolph, Virginia



Patrick Henry, Virginia



George Clinton, New York



Willie Jones, North Carolina

Now That It's Fashionable
To Show Concern
For Wildlife And The Environment,
We'd Like To Remind You
We've Been Doing That For 30 Years.



Marlin Perkins and Jim Fowler, of Mutual of Omaha's Wild Kingdom, examine a Red-tailed Hawk. While not a particularly good flyer, the Red-tailed Hawk can soar incredible distances on warm columns of air.

Mutual Of Omaha. Protecting You In

As the need to more fully understand and preserve our home planet becomes more obvious every day, increasing numbers of individuals, organizations, and even corporations are beginning to address issues of social responsibility and environmental policy.

Mutual of Omaha, however, recognized this responsibility decades ago. Over the years, we've supported global conservation projects, wildlife organizations and educational programs. In fact, to this day, we're best known for Mutual of Omaha's Wild Kingdom, a television program that has been a strong influence on public attitudes favoring the understanding and conservation of our natural world.



Earth, photographed by Apollo 17 in 1972

Ways No One Ever Thought Of Before.SM



At Mutual of Omaha, we've always seen the goals of the world's leading environmentalists and naturalists as an extension of our own goals. Perhaps because there's a natural connection between protecting a family's resources and protecting the world's resources.

If you expect a company with that kind of history to be a leader in its own industry as well, you're correct. Over the years, we've continually expanded and improved our line of insurance and investment services to meet the evolving needs of our customers. To help them adapt to changes in their lives and resources and prepare them for the future.



There Are Things You Can't Take For Granted Anymore. Having The Right Insurance Plan Is One Of Them.

Change is the human condition. And as we change throughout our lives, so do our needs. Especially in the realm of insurance. Because to really protect us, our insurance plans need to change along with us.

Unfortunately change is something many insurance companies try to avoid. But not the Mutual of Omaha Insurance Companies.

As one of the largest providers of individual health insurance, we were among the first to address the issue of elderly care. With a Long Term Care policy that covers nursing and nursing home care.

We were also one of the first to develop disability income protection, which can replace a portion of your income if you're injured, sick or disabled and can't work.

We realize that people's lives are changing more than ever before in history. So we offer a comprehensive approach that allows you to draw from our full line of insurance products: life, health, group and small business insurance, and investment services. And individually tailor them to adapt to your changing needs, throughout your lifetime.

Our approach goes well beyond business as usual. But it seems only natural from a company with a history of concern for our changing world.

Because the simple truth is this: today, insurance can't really protect you unless it can change with your needs.

It's not easy to provide such flexibility. It demands a lot more from us and our agents. So our agents are trained to act as consultants; to offer the kind of face-to-face help so vital in today's complex, changing world.

And as partners go, you couldn't find one with better credentials than the Mutual of Omaha Insurance Company. We've consistently received A+ ratings from independent insurance analyst A. M. Best, based upon our financial stability and sound operating performance. Our fiscal management practices exceed industry guidelines. And the vast majority of your inquiries are handled with your initial call. In addition, claims transactions are processed in an average of just six days — less in some cases.

So if you want an insurance company to respond to you for a change, contact a Mutual of Omaha agent for more information. You'll be doing business with a company that's always been years ahead of its time.



**Mutual of Omaha
Companies**

Protecting You In Ways No One Ever Thought Of Before.SM

be reduced to the same level of calamity, it would have been much more just & wise to have ~~concluded~~ concluded the other way that as most of the states had judiciously preserved this palladium, those who had wandered should be brought back to it, and to have established that a bill of rights is what the people are entitled to against every government on earth, general or particular, that no just government should repress or rest on infernal blished general right instead of general wrong. The second feature I dislike, and greatly dislike, is the abandonment in every instance of the necessity of rotation in office, and most particularly in the case of the President. experience concurs with reason in concluding that the first magistrate will always be re-elected

"The natural course of power is to make the many slaves to the few," declared Irish-born farmer William Findley, a bitter foe of the new Constitution at the Pennsylvania ratification convention. "Let us add a bill of rights." In Massachusetts influential Gov. John Hancock was persuaded to see "the happiest consequences" if the Constitution were amended, and elder statesman Sam Adams concurred, adding more rights-related amendments that were voted down. In Maryland lawyer William Paca and colleagues failed to get any of 28 amendments passed, but their minority report was widely read. Richard Henry Lee of Virginia insisted in late 1787 "that the new Constitution proposed for the Government of the U. States be bottomed upon a declaration, or Bill of Rights." At the crucial Virginia convention Gov. Edmund Randolph, who had refused to sign the Constitution, maintained, "The accession of eight states has reduced our deliberations to the question of union or no union." But Patrick Henry, who had spurned the Constitutional Convention in 1787, fiercely opposed ratification without prior amendments. In New York Gov. George Clinton warned, "History does not furnish a single instance of a government once established, voluntarily yielding up its powers to secure the rights and liberties of the people." And in North Carolina Edinburgh-educated Willie Jones successfully led the Antifederalists who refused ratification until necessary amendments could be obtained. Surmising that the amendment process might "take up about eighteen months," he told the convention, "I would rather be eighteen years out of the Union than adopt it in its present form."

Conflict

THE INK HAD hardly dried on the new charter when ringing calls for adding to it—and changing it—filled the halls where delegates met in the ratification conventions summoned by 12 states. (Rhode Island initially sent the Constitution to the towns, where it was defeated.) Somebody counted them up, and more than 200 separate amendments were proposed in all. One bit of doggerel went: "The convention in great fury hath taken away the trial by jury."

Delaware was the first to ratify, with a unanimous vote on December 7, 1787. In Pennsylvania, however, the battle was squared from the outset between supporters of the Constitution, known as Federalists, and opponents who asserted that the charter did away with a federal linkage of states—under the Articles of Confederation—putting in its place a national government with excessive powers granted to Congress. Pennsylvania ratified, but with substantial opposition. New Jersey and Georgia rat-

ified unanimously, and Connecticut followed with a large majority. But in Massachusetts, Antifederalists mounted a monthlong fight so strong that the Federalists worried that ratification was endangered. So they lured Gov. John Hancock, who was known to be wavering, out of his sickbed with a promise of supporting him for the presidency if Virginia should fail to ratify and thus cripple George Washington's candidacy. Hancock introduced nine amendments to soothe Antifederalists, making the final vote a squeaker, 187 to 168—and, by early February 1788, the Constitution had six states behind it, needing three more.

Savage arguments about rights and other amendments raged through Maryland, South Carolina and New Hampshire, though all three eventually ratified. Without Virginia, however, the new nation would be badly weakened. There James Madison—who had originally held to the Federalist position that a bill of rights was unnecessary because Congress was limited to the powers delegated to it—began to yield to pressure for recommendatory amendments. But in June 1788 Antifederalist leaders George Mason and Patrick Henry continued to insist on prior amendments that protected basic rights as a condition for ratification. "Here is a revolution as radical as that which separated us from Great

Britain," said Henry. "It is as radical, if in this transition our rights and privileges are endangered, and the sovereignty of the States be relinquished. . . . The rights of conscience, trial by jury, liberty of the press, all your immunities and franchises, all pretensions to human rights and privileges, are rendered insecure, if not lost. . . ." In the end the Virginia vote was also a squeaker—89 to 79—with a detailed 20-point proposal for a bill of rights appended.

In New York the Antifederalists had great strength, but so did the Federalists, whose leaders John Jay and Alexander Hamilton were both in attendance. The news that New Hampshire (the necessary ninth state to ratify) and powerful Virginia had accepted the Constitution affected New York's very close (30-27) decision in late July to ratify—with 24 suggested rights-related amendments.

In North Carolina Antifederalists stalled the state convention to a deadlock in September 1788. But the Union had a Constitution ratified by 11 states—and the new Congress had a clear message that the people wanted a bill of rights.

From Paris, U.S. Minister to France Thomas Jefferson greatly influenced the battle for a bill of rights. He sent the letter above to James Madison in 1787.



Congress

THEY LOVED to argue, these windy but articulate members of the First United States Congress, as if they were exhilarated over the golden moment and eager to make real all their yearnings for liberty.

But when James Madison had

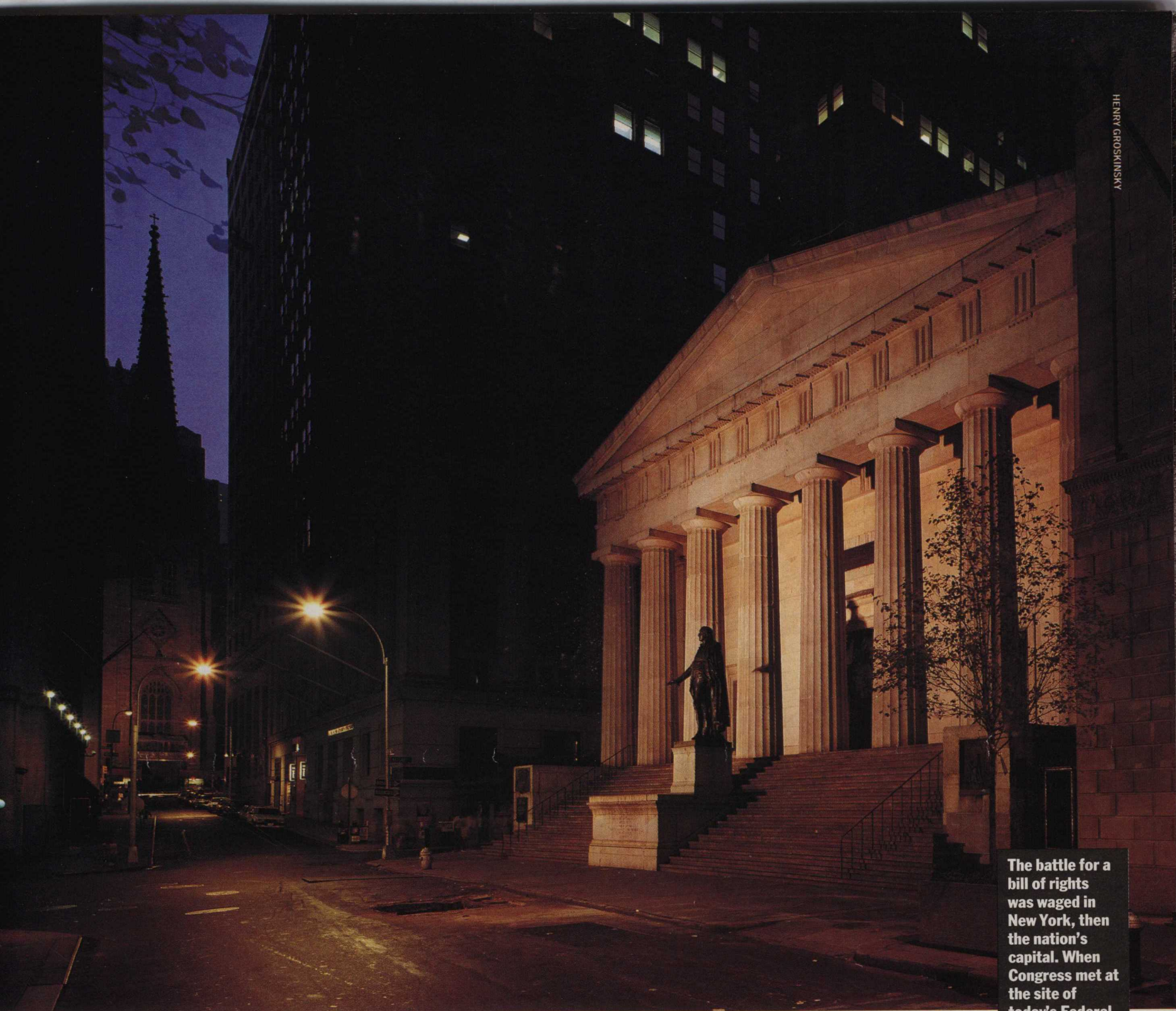
the chance, on June 8, 1789, to introduce his bill of rights—pressing House business, such as import and tonnage duties, had prevented him from doing so earlier—his colleagues saw no urgency to act. Then, six weeks later, when Madison begged for “a moment of leisure” on the subject, a committee was formed.

The resulting proposals, which were mostly Madison’s own, fired up the House. But even ardent supporters, like Elbridge Gerry of Massachusetts, kept their independence of mind. Gerry quarreled strenuously with Madison’s contention that “all government is intended for the benefit of the peo-

Reasons urging amendment

1. to prove fed^{ts} friends to liberty
2. remove remaining inquietudes
3. bring in N. C. & R. Island.
4. to improve the constitution

In notes for his speech introducing a bill of rights, James Madison (*top*) listed “Objectns. of 3 kinds vs the Constn,” his belief that such rights would be “useful—not essential” and reasons (*above*) why amending was necessary.



The battle for a bill of rights was waged in New York, then the nation's capital. When Congress met at the site of today's Federal Hall, where Washington's statue now stands, the spire of Trinity Church (center) punctuated the panorama.

ple." Most, Gerry carped, "are designed for the purposes of oppression and personal ambition." He did not, Gerry sniffed, want anything to go forth from the House "which is not true in fact."

Some feared that opening up the question of the Constitution again might unravel the whole document. But no less a personage than George Washington had given his blessing to the notion of amendments, saying in his inaugural address that he was confident the job could be done with "a reverence for the characteristic rights of freemen, and a regard for the public harmony."

Madison therefore doggedly

persisted. Besides, during his campaign for his congressional seat, he had given his word that he would work for a bill of rights. Tactfully, cautiously and with masterful diplomacy, he guided the amendments—which he called "the prescriptions in favor of liberty"—through the minefield of congressional vanity, opposition and parliamentary procedure.

Madison's aim was a set of amendments that would still the fears of citizens who were not quite satisfied with the Constitution. "The great object in view," he reasoned, "is to limit and qualify the powers of government." Therefore his bill, he said, "ought to be lev-

elled against that quarter where the greatest danger lies, namely, that which possesses the highest prerogative of power. But this is not found in either the executive or legislative departments of government, but in the body of the people, operating by the majority against the minority."

It was only a paper barrier, Madison was quick to admit, but "it may be one mean to controul the majority." His opponents snarled that Madison's bill was a cynical and demagogic ruse, a "tub to the whale," meaning that it was a distraction from the real threat to the ship of state: the Constitution itself.

On August 22, the House accepted the 17 amendments—with some modifications. At the suggestion of Roger Sherman of Connecticut, the amendments were affixed to the end of the Constitution, though Madison had, from the beginning, wanted them woven into the document. Still, they remained listed in the order he had proposed them for inclusion in the Constitution. They next went to the Senate—where yet more emending awaited Madison's amendments.

In the HOUSE OF REPRESENTATIVES.

RESOLVED, BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, two thirds of both Houses ~~deeming it necessary~~. That the following Articles be proposed to the Legislatures of the several States, as Amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes as part of the said Constitution—Viz.

ARTICLES in addition to, and amendment of, the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

After the first enumeration, required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor less than one Representative for every fifty thousand persons.

ARTICLE, THE SECOND

No law varying the compensation to the members of Congress, shall take effect, until an election of Representatives shall have intervened.

ARTICLE THE THIRD

Congress shall make no law establishing ~~one religious or~~ religion or prohibiting the free exercise thereof, nor shall the ~~rights of~~ of Conscience be infringed.

ARTICLE, THE FOURTH.

The Freedom of Speech, and of the Press, and the right of the People peaceably to assemble, and to apply to the Government for a redress of grievances, shall not be infringed.

ARTICLE THE FIFTH.

A well regulated militia, composed of the body of the People, being the best security of a free State, the right of the People to keep and bear arms, shall not be infringed; but no one religiously scrupulous of bearing arms, shall be compelled to render military service in person.

ARTICLE THE SIXTH

No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

ARTICLE THE SEVENTH.

The right of the People to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. *a*

ARTICLE THE EIGHTH.

No person shall be subject, without due process of law, to more than one trial or one punishment for the same offense, nor shall he be compelled in any criminal case, to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

ARTICLE THE NINTH

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defence.

ARTICLE THE TENTH

The trial of all crimes (except in cases of impeachment, and in cases arising in the land or naval forces, or in the militia when actually serving in time of War or public danger) shall be by an impartial Jury of the State, with the requisite of unanimity for conviction, the right of challenge, and other accustomed requisites; and no person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment by a Grand Jury; but this shall not extend to places in the possession of an enemy, nor to cases arising in military service, the indictment and trial may by law be substituted in some other place within

ARTICLE THE ELEVENTH

No appeal to the Supreme Court of the United States, shall be allowed, where the value in controversy shall not amount to one thousand dollars, nor shall any fact, triable by a jury according to the course of the common law, be otherwise re-examinable, than according to the rules of common law.

ARTICLE THE TWELFTH.

In suits at common law, the right of trial by jury shall be pre-
served.

ARTICLE THE THIRTEENTH

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

ARTICLE THE FOURTEENTH

No State shall infringe the right of trial by jury in criminal cases, nor the right of conscience, nor the freedom of speech, or of the press.

ARTICLE THE FIFTEENTH

The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people.

ARTICLE THE SIXTEENTH

The powers delegated by the Constitution to the government of the United States, shall be exercised as therein appropriated, so that the Legislative shall never exercise the powers vested in the Executive or Judicial; nor the Executive the powers vested in the Legislative or Judicial; nor the Judiciary the powers vested in the Legislative or Executive.

ARTICLE THE SEVENTEENTH

The powers not delegated by the Constitution, nor prohibited by it, to the States, are reserved to the States respectively, *or to the U.S.*

Telle,
JOHN BECKLEY, Clerk.

In SENATE, August 25, 1789.

Read and ordered to be printed for the consideration of the Senate.

Attest SAMUEL A. OTIS, SECRETARY.

Acceptance

NOW IT WAS the job of the state legislatures to consider passage of the Bill of Rights. Approval by three fourths—10—of the states was needed when copies of the amendments left Congress; but when Vermont joined the Union in early 1791, the number was raised to 11.

The process took another agonizing two years, as the amendments inched their way through the state houses. They prompted North Carolina to ratify the Constitution in November 1789, and a month later the state adopted the Bill of Rights. And in the spring of 1790, Rhode Island accepted both. Georgia legislators, however, passed altogether, saying it was too early to start adding amendments. Experience alone, they said, would reveal “the defective parts of the Constitution.” Several other states took a different tack, approving most amendments but adding a few of their own.

Citizens themselves were anything but unanimous. In New York Abigail Adams, wife of the Vice President, was shocked at this “combination to destroy all order, & overthrow the Constitution.” The amendments, she said, would “strike a deadly blow at the vitals.”

In Virginia, that caldron of revolutionary and rhetorical fervor, the debate over the proposed amendments fired up all over again. On November 3, 1791, Vermont adopted them; on December 15 Virginia became the necessary 11th state to secure passage.

There had been casualties. The first two amendments had failed to obtain approval: One apportioned House seats, the other curtailed Congress’s power to vote itself salary hikes.

But 10 amendments had been accepted by the states—and on March 1, 1792, Secretary of State Jefferson could send official word to Congress: the Constitution, and the country, had a Bill of Rights at last.

In their state capitol in Richmond, designed by Thomas Jefferson, Virginia legislators debated for two years before ratifying the Bill of Rights on December 15, 1791.



Just another square who stayed in school.

As America's best known athletic teamwear manufacturer, we know what it takes to be competitive. And we also know that no other uniform can compete with a cap and gown. So we're making posters like this ad available to coaches and teachers to help remind athletes what great shape an education can leave them in.



STAY IN SCHOOL

For more information about our "Stay In School" campaign, write: Russell Corporation, Dept. M, P.O. Box 272, Alexander City, AL 35010.

The Dark Century

In the 1800s the business of America was not the Bill of Rights

BY ROBERT ALLEN RUTLAND

JAMES MADISON's warning in 1789 that the Bill of Rights was needed to protect the weak from the strong was a message that long remained unheeded. After 1791, when the necessary 11 state legislatures had ratified the first 10 amendments, the nation turned its attention to the mundane matters of crops, markets and ledgers, apparently content to know a Bill of Rights existed.

The Antifederalists, as a party, dissolved almost overnight. Western farmers, who had been upset during the ratification struggle of 1787-88, soon worried more about the price of corn than the great rights of mankind. In the county court-houses the same lassitude prevailed. For almost 150 years, in fact, the Bill of Rights was paid lip service in patriotic orations and ignored in the marketplace. It wasn't until after World War I that the Supreme Court began the process of giving real meaning to the Bill of Rights.

Liberty, the watchword of the American Revolution, was always more of an ideal than a reality. When backcountry farmers balked at a whiskey tax in 1794, the government strong-armed them into compliance and threatened to shoot a few protesters. Several years later pro-French citizens (including two troublemakers named Jefferson and Madison) encouraged public meetings to complain about President John Adams's policies that seemed bent on a Franco-American war. Harsh words and hotter heads led to passage of the Sedition Act in 1798, which made it a crime to criticize the President, the government or Congress. Jeffersonian Republicans were the obvious target—the law was set to expire in 1801, when Adams's term would end—and only Republican editors, printers, orators and town drunks were jailed. An outraged Jefferson knew that an appeal to the Federalist-appointed Supreme Court would be useless, so instead he promoted the Virginia and Kentucky Resolutions, which branded the Sedition Act (and the Alien Friends Act as well) as violations of the Bill of Rights. The effort failed, but voters got the point and sent the Federalists reeling to defeat in 1800, routing Adams and making Jefferson President.

A long period of quiet ensued, interrupted by the War of 1812, when Federalists' pleas to obstruct the war effort came close to treason, though no one was prosecuted. For the next half century the Bill of Rights lay dormant as the specter of slavery overshadowed politics, business, even family relationships. Shouting matches replaced rational conduct, as when Congressman John Quincy Adams objected to the

snuffing of antislavery petitions from his New England constituents in 1836. The former President insisted that the sacred right of petition was being ignored, but proslavery congressmen voted for the "gag rule" (tabling all matters relating to the subject of slavery) as late as 1844.

Until the Civil War, mobs caused more trouble than misguided lawmakers. In 1836 the antislavery editor James G. Birney was warned that his newspaper *The Philanthropist* was not welcome in Cincinnati. When Birney persisted, a mob "scattered the type into the streets, tore down the presses and completely dismantled the office" while the mayor looked on in silent approval. A similar suppression took place in Newport, Ky., where the antislavery *Daily News* was smashed by angry proslavery elements aware that the sheriff was on their side. Complaisant lawmen and judges reflected local opinion that was indifferent to the Bill of Rights. The Supreme Court could not intervene. In 1833 Chief Justice John Marshall, writing for a unanimous court in *Baron v. Baltimore*, stated, "These amendments contain no expression indicating an intention to apply them to state governments. This court cannot so apply them."

Even President Abraham Lincoln, as a wartime measure, suspended the right of habeas corpus. In 1862 two newspaper editors from Iowa who were antiwar Democrats were secretly whisked from their homes and thrown into a Washington jail. They were never charged with a crime, and their release—after the elections—was as bizarre as their arrest.

By the early 1870s, and despite the 13th, 14th and 15th amendments, the civil rights issue remained. Blacks were citizens and, legally, voters; but they were soon powerless voters, robbed of their rights by state laws and mob action. Even more vicious were the jim crow laws. The right

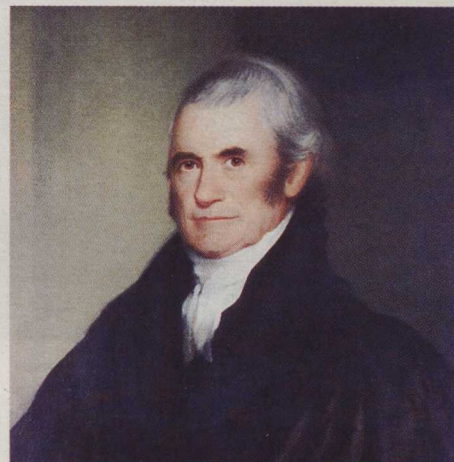
to travel without harassment or sleep in a hotel or eat a decent meal was made a white man's privilege and a black man's dream.

And Mormons had no reason to celebrate the First Amendment, either, after the Supreme Court in 1878 upheld a law that forbade bigamy in the territories. Indeed, from 1831 onward the Mormons, whose religion embraced the practice of polygamy, had been hounded from settlement to settlement, and in 1844 their leader, Joseph Smith, and his brother were lynched by an Illinois mob; the surviving believers then trekked from the Mississippi to their New Zion in present-day Utah. After Congress outlawed bigamy in 1862 Mormons challenged the law, claiming that it violated their guarantee to worship freely. The high court decision (*Reynolds v. United States*) upheld the law and kept Utah out of the Union until 1896.

The 19th century closed on a low note. In 1896 the country's leaders were satisfied when the Supreme Court said that "separate but equal" facilities for whites and blacks were constitutionally proper. That decision (*Plessy v. Ferguson*) made a mockery of justice for millions of black citizens. They were free, but they were not equal.

Fewer than a dozen cases came before the Supreme Court on Bill of Rights issues during the entire 19th century. It awaited visionaries on the courts and in the White House to usher in a new attitude toward the law as the protector of the people's liberties. As the century closed, Oliver Wendell Holmes Jr.,

who would become the Supreme Court's "Great Dissenter," rode a streetcar to his state court chambers in Boston, while young Franklin Delano Roosevelt, whose Court appointees helped give new meaning to the Bill of Rights, studied history near Harvard Yard. But when the century of darkness ended, a revival of the Bill of Rights was still a generation away. ☆

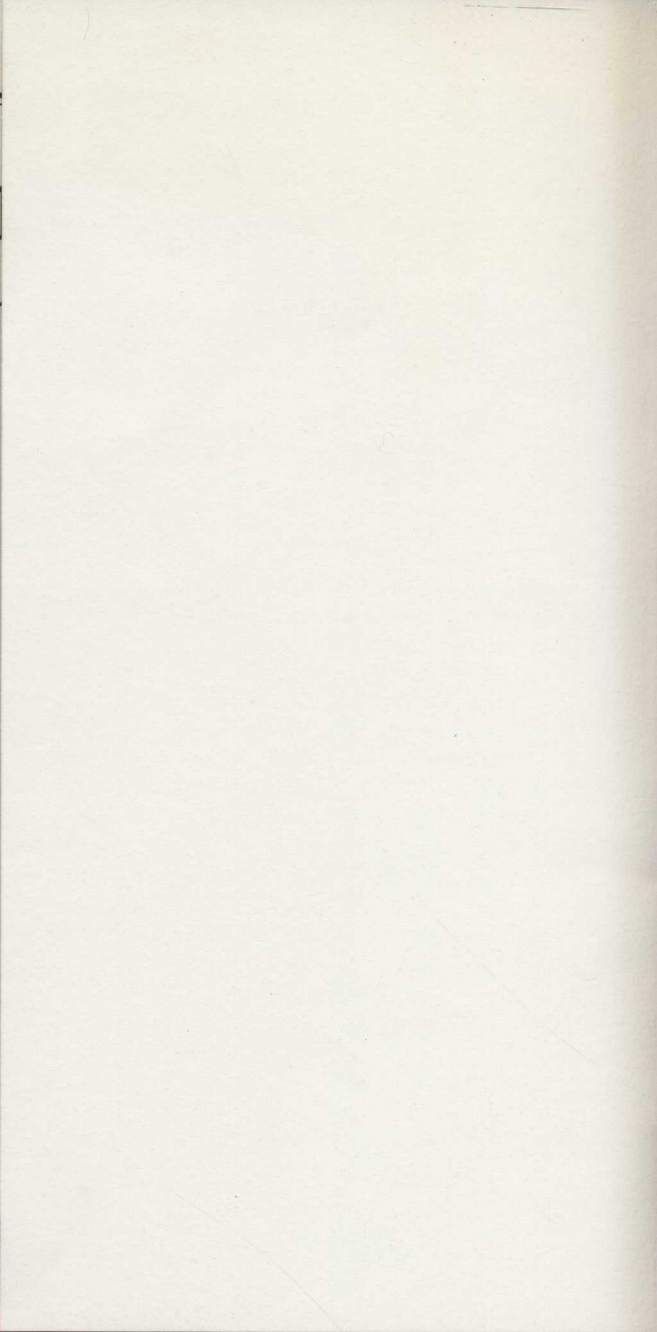


Chief Justice John Marshall

Robert Allen Rutland, professor emeritus of history at the University of Virginia, is editing the James Madison Encyclopedia, to be published in 1993.

A Special Offer From Mazda

Details inside.





SPECIAL SUPPLEMENT TO:

LIFE

From the pages of the
Little, Brown book

The Meaning of Life

by David Friend
and the Editors of

LIFE

BETTY FRIEDAN
OLIVER NORTH
CARL SAGAN
DESMOND TUTU
JOHN UPDIKE
MARILYN VOS SAVANT
and more...
...consider why
we are here

For thousands of years, everyone who thinks has surely thought of the question at least once.

What is the meaning of life?

The editors of LIFE magazine thought about it enough to spend years gathering the answers contributed by 173 sages from all walks of life and 127 world-class photographers.

And those words and pictures, sampled here, are now a book called *The Meaning of Life*.

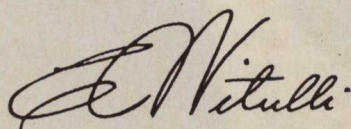
It's a very humbling experience to be associated with a volume on such a profound question.

A simple question, yet always capable of producing a startling range of responses. And, like life itself, some are uplifting, some are unsettling, but all are revealing: from Jesse Jackson to Jackie Mason, Alfred Eisenstaedt to Desmond Tutu, Marlee Matlin to Muhammad Ali, the Dalai Lama to Linus Pauling, Rosa Parks to Richard Nixon.

Mazda is proud to present *The Meaning of Life*. In the coming months, we will continue to sponsor programs on this theme, including a traveling exhibition of photos and essays as well as a television special.

Because we feel that when you ask better questions, you tend to come up with better answers.

And the questions don't get much better than this one.



C. J. Vitulli

CHIEF OPERATING OFFICER
MAZDA MOTOR OF AMERICA, INC.



Leonard Freed
HARLEM SUMMER DAY

(Cover)
André Da Miano
BIRTH, FIRST PHOTOGRAPH IN
FIRST ISSUE OF LIFE MAGAZINE

From the
pages of
the Little,
Brown book

**The
Meaning
of
Life**

by David Friend
and the editors
of LIFE



Vsevolod Tarasevich
THE GOLDEN KISS, SIBERIA

From the
pages of
the Little,
Brown book

The
Meaning
Of
Life

by David Friend
and the editors
of LIFE

The meaning of life is listening to Pavarotti, feeling the sun on your face, drinking a bottle of wine, and then another. The meaning of life is having a safe and healthy society, a happy family life, good health, a loving wife, work that you like, smelling the smell of a new car and the ocean air, being able to hit a bull's-eye, coming home with the fish and not another fish story.

Carmine Pucci

is a butcher.

Ralph Sumner died the other day, full of years (eighty plus) and wisdom (dairy farmer, cabinetmaker, churchgoer, member of the local road crew, dowser). When we laid him in the ground there were some tears, but there was also a lot of gratitude for the joy he had spread around the folk of Heath, MA 01346. Ralph's death made me think about my life.

I believe we are placed here to be companions—a wonderful word that comes from *cum panis* (“with bread”). We are here to share bread with one another so that everyone has enough, no one has too much and our social order achieves this goal with maximal freedom and minimal coercion. There are many names for such sharing: utopia, the beloved community, the Kingdom of God, the communion of saints. And while the goal is too vast to be realized solely on this planet, it is still our task to create foretastes of it on this planet—living glimpses of what life is *meant* to be, which include art and music and poetry and shared laughter and picnics and politics and moral outrage and special privileges for children only and wonder and humor and endless love, to counterbalance the otherwise immobilizing realities of tyrants, starving children, death camps and just plain greed.

But I expect Ralph Sumner now sees it more clearly than I do.

Robert McAfee Brown,

Presbyterian minister and educator,
is a professor of theology and ethics.

In the past few decades, the United States and the Soviet Union have accomplished something that—unless we destroy ourselves first—will be remembered a thousand years from now: the first close-up exploration of dozens of other worlds. Together we have found much out there that is magnificent, instructive and of practical value. But we have found no trace, no hint of life. The Earth is an anomaly. In all the solar system, it is, so far as we know, the only inhabited planet.

We humans are one among millions of separate species who live in a world burgeoning, overflowing with life. And yet, most species that ever were are no more. After flourishing for one hundred fifty million years, the dinosaurs became extinct. Every last one. No species is guaranteed its tenure on this planet. And humans, the first beings to devise the means for their own destruction, have been here for only several million years.

We are rare and precious because we are alive, because we can think. We are privileged to influence and perhaps control our future. We have an obligation to fight for life on Earth—not just for ourselves but for all those, humans and others, who came before us and to whom we are beholden, and for all those who, if we are wise enough, will come after. There is no cause more urgent than to strive to eliminate on a global basis the growing threats of nuclear war, environmental catastrophe, economic collapse and mass starvation. These problems were created by humans and can be solved by humans. No social convention, no political system, no economic hypothesis, no religious dogma is more important.

The hard truth seems to be this: We live in a vast and awesome universe in which, daily, suns are made and worlds destroyed, where humanity clings to an obscure clod of rock. The significance of our lives and our fragile realm derives from our own wisdom and courage. We are the custodians of life's meaning. We would prefer it to be otherwise, of course, but there is no compelling evidence for a cosmic Parent who will care for us and save us from ourselves. It is up to us.

Carl Sagan,

Pulitzer Prize-winning author and
professor of astronomy and space sciences,
writes about space exploration and the
long-term effects of nuclear war.

Ancient religion and modern science agree: We are here to give praise. Or, to slightly tip the expression, to pay attention. Without us, the physicists who have embraced the anthropic principle tell us, the universe would be unwitnessed, and in a sense not there at all. It exists, incredibly, because of us. This formulation (knowing what we know of the universe's extent) is more incredible, to our sense of things, than the Old Testament situation of a God willing to suffer, coddle, instruct and even (in the Book of Job) to debate men, in order to realize the meager benefit of worship, of praise for His Creation. What we certainly have is our instinctive intellectual curiosity about the universe from the quasars down to the quarks, our delight and wonder at existence itself, and an occasional surge of sheer blind gratitude for being here.

John Updike,

novelist, poet and short-story writer,
is the author of *Rabbit, Run*.

We are not here to predict the future but to change it for the good. We are not here as helpless creatures but as sons and daughters of Adam—capable of affecting our own fate. We are not here to avoid decisions but to make hard choices between good and evil by using an ethical system not invented by man but by our Creator—a framework of truth and moral guidance through which we can find deliverance from despair. We are not here to glorify ourselves, but to glorify He who made us all—and who eventually will judge each of us on how well we did at the end of the journey we all take but once.

Oliver North,

former National Security Council aide
to U.S. President Ronald Reagan, was the
key figure in the Iran-contra scandal.

The only real meaning in life can be found in a good man. And maybe Paris. Preferably the two together.

Marilyn vos Savant,

columnist and author, has
the world's highest I.Q. (230).

YOU'RE NOT JOHN DOE. WHY DRIVE HIS CAR?

A car isn't just something you drive. It's something you wear. The Mazda MX-3 is a new sports coupe for those of us who'd never be seen driving a beige cardigan. ✂ Instead of refining and reinventing the ordinary to make a car that everyone would like, Mazda engineers made a car that a few people will love. ✂ So what's to love about the MX-3? For a start, it's the only car of its kind with smooth V6 power.* And suspension that lets it change direction quicker than a politician in an election year. ✂ Its rear seat is widely rumored to be more spacious than some Manhattan studio apartments. Plus it folds down to hold impulse purchases from wicker ottomans to mounted marlins. ✂ These are just a few of the reasons you might love the new Mazda MX-3. But if it's not for you, that's okay. It's not for John Doe, either.

THE MAZDA MX-3 GS

The only 1.8L, 24-valve V6 in its class. Plus 4-wheel independent suspension and disc brakes (ABS optional). And a 36-month/50,000-mile limited warranty with no-deductible, "bumper-to-bumper" protection. See your dealer for details. So where do you find one? Call 1-800-639-1000.



Esteem CLEANERS



mazda
IT JUST FEELS RIGHT.®





Why are we born was a really hard paper to write. At first for a long time I couldn't think of anything but now I think I no something to say. I think God made us each born for a different reason. He doesn't want us to do the same things so that's why he makes us all so different. If God gives you a great voice maybe he wants you to sing. Or else if God wants you to be a farmer he might give you to a family that lives on a farm so you get used to the animals and your not afraid of them. And maybe if God makes you grow to be 7 feet tall maybe he wants you to play for the Lakers or the Celtics.

When my friend Kim died from her cansur I asked my Mom if God was going to make Kim die when she was only 6 why did he make her born at all. But my Mom said even thogh she was only 6 she changed people's lives. What that means is like her brother or sister could be the siontist that discovers the cure for cansur and they decided to do that because of Kim. And like me too. I used to wonder why did God pick on me and give me cansur. Maybe it was because he wanted me to be a dr. who takes care of kids with cansur so when they say "Dr Jason, Sometimes I get so scared I'm going to die" or "you don't know how weird it is to be the only bald kid in your whole school" I can say "Oh yes I do. When I was a little boy I had cansur too. And look at all my hair now. Someday your hair will grow back too."

Jason Gaes,

twelve-year old cancer victim, wrote
My Book for Kids with Cansur.

Harry Benson

TOO POOR TO GO ON SCHOOL TRIP,
BOY FISHES THE DAY AFTER
CLASSMATES PERISH IN PLANE CRASH

From the
pages of
the Little,
Brown book

The
Meaning
Of
Life

by David Friend
and the editors
of LIFE



Challenger 6, 41 G
Space Shuttle Crew/NASA
 CUMULONIMBUS CLOUDS OVER
 CENTRAL NIGERIA

Life's meaning is a mystery. I'm not one given to theological musings, but I acknowledge these mysteries. In my own life, the profound root of my being—perhaps coming from my Jewish soul—is an existential imperative that we are here in order to carry forward the human condition, not just by having babies but by what we do with our lives. Whatever name we give to God, we sense that there is some purpose in ourselves and we are moved to purposes beyond ourselves. I celebrate my Jewish tradition; in my soul, The Lord, Our God, Is One.

Betty Friedan,

writer, sparked the American feminist movement with *The Feminine Mystique*.

From the
pages of
the Little,
Brown book

The Meaning of Life

by David Friend
and the editors
of LIFE

The evolution of the world is a great manifestation of God. As scientists understand more and more about the interdependence not only of living things but of rocks, rivers—the *whole* of the universe—I am left in awe that I, too, am a part of this tremendous miracle. Not only am I a part of this pulsating network, but I am an indispensable part. It is not only theology that teaches me this, but it is the truth that environmentalists shout from the rooftops. Every living creature is an essential part of the whole.

All creatures have special attributes. Our particular attribute is the ability to reason. With reason we are enabled to react independently from our environment. What are we supposed to do?

Our surroundings are awesome. We see about us majestic mountains, the perfection of a tiny mouse, a newborn baby, a flower, the colors of a seashell. Each creature is most fully that which it is

created to be, an almost incredible reflection of the infinite, the invisible, the indefinable. All women and men participate in that reflected glory.

We believe that we are in fact the image of our Creator. Our response must be to live up to that amazing potential—to give God glory by reflecting His beauty and His love. That is why we are here and that is the purpose of our lives. In that response we enter most fully into relationships with God, our fellow men and women, and we are in harmony with all creation.

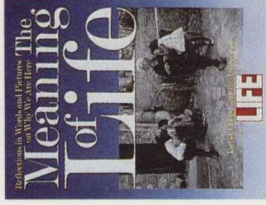
Desmond Tutu,

South African civil rights leader and Nobel Peace Prize winner, is the Anglican Archbishop of Capetown.

If Life Is A Journey, Here Are Two Things To Help You On Your Way.



The New Mazda MX-3.



The Meaning of Life free.

Take this certificate to your Mazda Dealer and test-drive any new Mazda before February 29, 1992. Then fill out this postage-paid card, have your dealer validate it and drop it in the mail. You will receive your free copy of *The Meaning of Life* (retail value \$24.95) by mail.

Name _____ Address _____ City _____

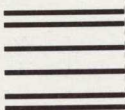
State _____ Zip _____ Telephone _____ Date of test drive _____

Model Tested _____ Current Vehicle Owned _____

Do you plan to purchase a new car _____ yes _____ no. If yes, within _____ 3 months _____ 6 months _____ 9 months _____ 1 year

Authorized Dealership Signature _____ Dealer Code _____ Date _____

Limit one book per card. NOT TRANSFERABLE/NOT NEGOTIABLE. Mechanical reproduction or other facsimiles are not valid. Offer available from Mazda while supplies last, but you must redeem certificate by March 31, 1992. Please allow 6-8 weeks after mailing for shipment. Limit one book per family. Valid driver's license required. Void where prohibited. For a free brochure, call 1-800-639-1000.



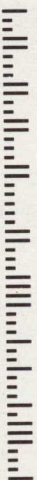
NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

BUSINESS REPLY MAIL

FIRST CLASS MAIL PERMIT NO. 22, TAMPA FL

POSTAGE WILL BE PAID BY ADDRESSEE

MAZDA/THE MEANING OF LIFE
PO Box 61082
Tampa FL 33661-1082





After 25,000 years of the question, one whole hour of answers.

What is the meaning of life? It's probably the most profound question ever asked. Even if you've never wondered yourself, we did. See what happens when this question is put to hundreds of people from all walks of life. Scientists, statesmen, philosophers, photographers, athletes,

MAZDA
presents
The
Meaning
Of Life

artists. It's a fascinating exploration of human feelings. Some are inspiring. Some are shocking.

Just like life itself. The question will be around forever, but this *LIFE* magazine special is coming soon. Mazda presents *The Meaning of Life*. Only on CBS.

A **LIFE** MAGAZINE TV SPECIAL 10 PM, FRIDAY, DECEMBER 27 ON CBS 

Based on the book *The Meaning Of Life*, created by David Friend and the editors of **LIFE** © 1991 Mazda Motor of America, Inc.

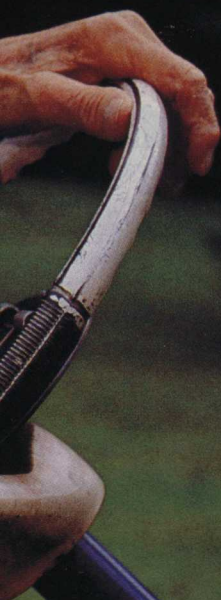
Justices have long argued that liberties
of the First Amendment are fundamental,
but history has not always concurred

First & Fo

1918 Absolutists like
Howard Moore
(top, second from left) are im-
prisoned at Fort Douglas,
Utah, for refusing the draft.
Above, Moore relaxes on a golf
cart on the grounds of his farm
outside Albany, N.Y.



remost



MICHAEL O'NEILL

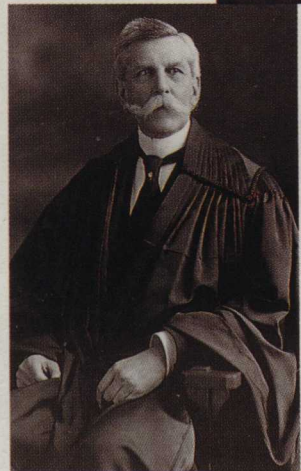
SPEECH. Press. Religion. Assembly. The great freedoms contained in the First Amendment are so basic to America's national identity, legal opinion has sometimes held that they are in a "preferred position" over all others. Given that, it is hard to believe that for most of our history the First Amendment was either ignored or treated as little more than a set of gorgeous-sounding platitudes (*page 48*). Only in the last 75 years have its lofty terms been seriously consulted by individuals seeking freedom from government repression. Some historians argue that the First Amendment cases that flooded the courts this century are the by-product of a larger federal government capable of greater interference; others say it is the result of "incorporation," the Fourteenth Amendment's application of federal rights to cases formerly left to the states. Whatever the reason, charges of rights abuses have followed history, ballooning at times of national stress, such as wartime, and at times of domestic upheaval, such as the 1960s. The Alien and Sedition Acts of 1798 were passed during fear of war with France; the Espionage Act of 1917 and the Sedition Act of 1918 were created during World War I. They threatened free speech by making it a crime to say anything intended to cause "contempt" or "scorn" for the government. At the same time, the first use of conscription in nearly 50 years raised new religious rights issues. Howard Moore (*left*) was one of 450 draftees court-martialed and imprisoned for refusing to serve. "I had long regarded war as an ugly, bloody business," says Moore, now 102. "I decided to take no part in it, whatever this might cost me." In the end, it cost Moore and others like him a lot. Conscientious objector status was granted then only to members of a religious group whose tenets specifically forbade war. When Moore proudly stated that he followed no church, only his own conscience, he was sent to prison. Absolutists—those who refused service of any kind—were beaten, shackled and hung by their thumbs. Moore was released in 1920, two years after the war's end. Yet his status as a CO would be protected today. Expanding its definition of religious freedom in the 1960s, the Supreme Court finally granted the right of conscientious objection to pacifists whose antiwar feelings were held "with the strength of traditional religious convictions." Weaving delicate paths like that through the dominant First Amendment issues of our time has been the difficult task of America's greatest legal minds. Forcing them to do so has been the accomplishment of some of our most courageous and principled citizens, several of whom are featured on these pages.

REPORTING: TEMMA EHRENFELD
TEXT: TODD BREWSTER

1918 During World War I, Eugene V. Debs is imprisoned for seditious speech after exhorting crowds: "You are fit for something better than . . . cannon fodder."



1919 Free speech does not "protect a man falsely shouting fire in a theater," writes Justice Oliver Wendell Holmes Jr. (*left*), in validating the 1917 Espionage Act. The Court unanimously sustains the conviction of Socialist Charles Schenck for distributing leaflets that denounced conscription. Speech can be curbed, Holmes says, if it shows a "clear and present danger" of bringing about "substantive evils."



1919 The Court upholds the conviction of pamphleteer Jacob Abrams (*far right, with codefendants*), who criticized U.S. intervention in the Bolshevik Revolution. Holmes's dissent, arguing danger must be imminent before speech is abridged, will eventually persuade the Court.



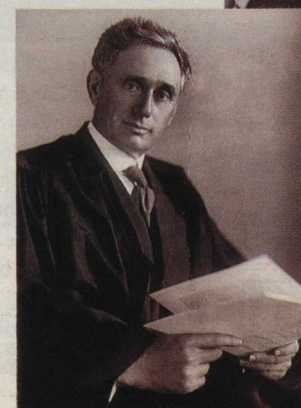
1925 Refusing to overturn New York's conviction of Socialist Benjamin Gitlow (*left*), who had advocated the overthrow of the government, the Court nevertheless plows new ground by extending the First Amendment to supersede state laws, a process called incorporation. Speech and press freedoms, say the majority, are fundamental rights to be "protected . . . from impairment by the States."



1925 Tennessee's "Monkey Trial" makes an issue of teaching evolution. Clarence Darrow (*far right*) argues for science teacher John Scopes, whose conviction is overturned on a technicality. Not until 1968 does the Court overturn a state law forbidding the teaching of evolution.



1927 While agreeing to uphold the conviction of Communist Charlotte Whitney, who argued for peaceful change, Justice Louis Brandeis (*left*) writes that speech can be suppressed only if the harm is "so imminent" it precludes "full discussion."





WILKINSON v. UNITED STATES

What organizations political or otherwise have you belonged to since 1929? That question, posed in 1952 to Frank Wilkinson, a Los Angeles housing administrator testifying at a neighborhood condemnation hearing, changed his life forever. Had he chosen to answer, and described his membership in groups like Youth for Herbert Hoover and the Methodist church, his life

would have been much easier. Instead he saw the question as a ploy by a real estate lobby to discredit slum clearance plans by suggesting they were Communist-inspired. Wilkinson was not a member of any party, but he refused to respond on principle, running head-on into the rights abuses that proliferated nationwide during the reign of the House Un-American Activities Committee. Subpoenaed by California's own Un-American Activities Committee, he refused to answer questions again and was

promptly fired from his job, then blacklisted. Called before the House committee in 1958, he pleaded the First Amendment, claiming the committee's mandate to investigate anything "un-American" gave it license to violate all First Amendment freedoms. He was arrested for contempt of Congress and, after losing his case before the Supreme Court in 1961, spent a year in prison. Now 77, he lives in Los Angeles with his dog Bella (*above*) and, 30 years later, still hopes to win an appeal, though a 1989 attempt failed.

1943 Reversing its decision in the *Gobitas* case, the Court rules 8-1 that West Virginia may not require Jehovah's Witnesses Marie and Gathie Barnett (*below*) to salute the flag. Freedom of speech, they have decided, includes the right not to speak.



1947 In the first case to "incorporate" the clause prohibiting the establishment of religion, Justice Hugo Black (*above*) writes that New Jersey may reimburse both public and parochial school students who use public transportation. State power, he says, should not be used to handicap religions any more than to favor them.

1947 The House Un-American Activities Committee combs Hollywood and unions for Communists; Frank Wilkinson (*left, with lawyer*) later challenges the committee on First Amendment grounds and loses.



1951 In the first Supreme Court challenge to the Smith Act of 1940, which made it a crime to advocate the violent overthrow of the government or to join groups so advocating, convictions of 11 Communists (*above*) are upheld. But Justice Hugo Black writes a powerful dissent, calling the law a "virulent form of prior censorship" that punishes speech and association.



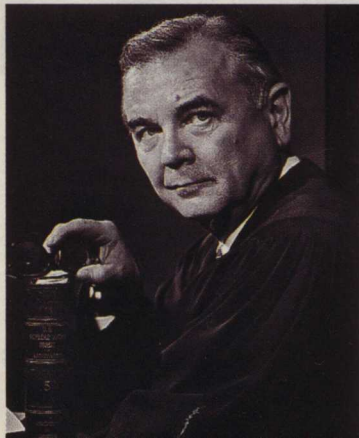
BATES v. LITTLE ROCK

Throughout the 1950s, no one was more hated by Arkansas's ardent segregationists than Daisy Lee Bates. As president of the state's National Association for the Advancement of Colored People, Bates was the target of whites out to block court-ordered integration of public schools. Her home was bombed and her windows shattered by rocks, her life only as good as the bad aim of those who shot at her in the night.

In 1957 Bates bravely led nine black students to Little Rock's Central High School. Though they were turned away by the Arkansas National Guard, integration was finally ushered in by federal troops. Undaunted, segregationists went after her another way. The Little Rock city council arrested her for refusing to comply with a new ordinance requiring Bates to turn over lists of all "dues-paying" NAACP members. The Supreme Court, overturning her conviction, agreed with Bates that the city had no reason for

wanting the lists other than to discourage people from joining. "The prime purpose of the law was to kill the Little Rock branch of the NAACP," she said. "They had planned to fire teachers whose names showed up on the lists." The Little Rock NAACP remains strong today, and Bates, 76, still lives in the same house on West 28th Street. But she is disappointed with the lack of progress on integration. "We're losing ground," she says. "There's no social activity between the races. People are staying apart."

1957 In *Roth v. U.S.*, the Court's first foray into issues concerning obscenity, Justice William J. Brennan Jr. (*below*) declares that sex and obscenity are not synonymous. To be judged obscene, material must appeal to "prurient interests."



1957 Arkansas NAACP chief Daisy Bates (*above, center*) is arrested for refusing to make her membership lists public, a requirement that authorities hoped would undermine the organization's growing power and help derail integration. In 1960 her conviction would be reversed by the Court as a violation of the protection of association.

1962 "It is not part of the business of government to compose official prayers," says the Court in *Engel v. Vitale*, denying the voluntary blessing adopted by a New Hyde Park, N.Y., school district and challenged by area families, seen rejoicing below.



1964 Recognizing that errors are "inevitable in free debate," the Court sides with *The New York Times* against Montgomery, Ala., police commissioner L. B. Sullivan (*above, center*), who claimed he had been libeled in an advertisement. The Court rules that public officials must prove "actual malice"—defined as "reckless disregard" for the truth—to win a libel case.



TINKER v. DES MOINES INDEPENDENT SCHOOL DISTRICT

As Mary Beth Tinker, 13, got dressed for school on December 16, 1965, she pinned a two-inch-wide strip of black cotton cloth around her left arm in protest against American policy in Vietnam. Tinker's gesture had the support of her family. Her father, a minister, was opposed to the war. So was her activist mother, who had painstakingly cut that strip and others from a yard of black fabric to hand

out to friends. Yet no one thought Mary Beth, one of the youngest of the Tinkers' six children, would be among the first students to challenge the Des Moines school board. Only two days before, the board had banned armbands as a "disruptive influence." So when Mary Beth arrived at her algebra class, she was summarily marched to the office and suspended. The issue quickly moved from classroom to courtroom, where the case was finally decided in favor of Tinker. "It can hardly be argued," wrote Justice

Abe Fortas, expressing the Supreme Court's 7-2 decision, "that either students or teachers shed their constitutional rights . . . at the schoolhouse gate." Today, Tinker, above with her mother, Lorena, and her son, Lenny, 11, works as a nurse at a children's hospital in St. Louis. She still finds it hard to believe that her name is in every book of constitutional law. "That's insignificant," she says. "What's important is the idea, the idea of constitutional rights for children. And I will always keep working for that."

1969 The protection of symbolic speech is reaffirmed in support of Mary Beth Tinker (below, with her mother). The child had been suspended from her Des Moines school for wearing a black armband protesting U.S. policy in Vietnam.



1972 The Court agrees with Jonas Yoder (below), who says Wisconsin's compulsory education laws violate the free exercise of his family's Amish religion, which counsels "separation, rather than integration" with society.



1971 In a classic confrontation, the Pentagon Papers, a secret history of U.S. involvement in Vietnam, is published after the Court rejects Nixon administration arguments that the disclosures were a threat to national security. Defense analyst Daniel Ellsberg (above, left) had given the papers to *The New York Times*.



1978 A federal district judge rules that the American Nazi party has a right to march in the heavily Jewish community of Skokie, Ill. Earlier, a state court had ruled the group could display swastikas. As long as there is no realistic fear of violence, says the court, "public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some hearers."



UNITED STATES v. THE PROGRESSIVE

Due process is rendered irrelevant," says Erwin Knoll, 60, "when the government chooses to invoke those magical, mystical words *national security*." In 1979 the editor of *The Progressive*, a small journal published in Madison, Wis., decided to challenge such "censorship" by publishing an article on how a hydrogen bomb works. The magazine assigned writer Howard Morland, who got everything he

needed from his college physics textbook, magazine articles, encyclopedias and interviews. There was no secret to the bomb; it was all in the public domain. Still, when the manuscript was shown to an MIT scientist for verification, it led to a Justice Department lawsuit to prevent publication. In the past, the Supreme Court had suggested that except to protect national security, the government could not prevent publication of documents. *The Progressive's* lawyers argued that the nation's security was not at

stake, and that even if it were, such a ban was unconstitutional. But the magazine never got its final day in court. A local newspaper published the H-bomb "secrets," rendering the government's case moot. Morland's article appeared in the November 1979 issue of *The Progressive*. Knoll, who finds the First Amendment "the most magnificent thing about America," wrote: "Feel free to question our judgment, but most of all feel *free*—more free than any of us were when the article could not be read by you." ☆

1979

Citing national security, the government wins a restraining order against Erwin Knoll (*below, left*), editor of *The Progressive*, to prevent him from publishing a story on how a hydrogen bomb works. Six months later the case is dropped.



1989

Again affirming symbolic speech, the Court votes to overturn the conviction of Gregory Lee Johnson (*above, center*), who was arrested for burning a flag at the Republican National Convention in 1984. When an outraged Congress passes the Flag Protection Act of 1989, the Court eventually strikes down that law as well.

1990

Suggesting a more conservative Court in the future, Justice Antonin Scalia (*below*) makes a sharp break from *Yoder* and writes an opinion ruling against two Native Americans who used peyote for religious purposes.



1990

A Fort Lauderdale jury of two men and four women acquits rapper Luther "Skyywalker" Campbell (*above, right, with lawyer*) on obscenity charges. Campbell had been arrested by deputies of the Broward County sheriff's office after his group, 2 Live Crew, sang lyrics describing sex acts. A juror remarks, "You take away one freedom, and pretty soon they're all gone."

How do you improve on
the car that became a symbol
for quality in America?
You make it better.



The New LeSabre

Buick LeSabre has earned an enviable reputation for quality. Of course, that didn't stop the people at Buick from striving to make LeSabre even better.

Safer

The new LeSabre offers the safety of anti-lock brakes (ABS), as well as a standard driver-side air bag supplemental restraint.

Roomier

The 6-passenger LeSabre now gives you even more front headroom and rear legroom. And the spacious trunk is easily accessible, thanks to the

ingenious new low liftover design.

Quieter

LeSabre's aerodynamic shape is designed to please both your eyes and ears. Wind noise is reduced to a whisper, while special acoustical insulation all but banishes road noise from the interior.

More Powerful

The LeSabre's 3800 V6 engine now offers even more horsepower. Yet it gets an EPA estimate of 18 mpg city/28 highway.

To learn more about the qualities that make the new Buick LeSabre even better, please call 1-800-531-1115.

Or better yet, see your Buick dealer for a test drive today.



BUICK®

The New Symbol For Quality
In America.

©1991 GM Corp. All rights reserved.
LeSabre is a registered trademark of GM Corp.
Buckle up, America!





Presumed Innocent

Portland's public defenders
battle for the rights of the accused

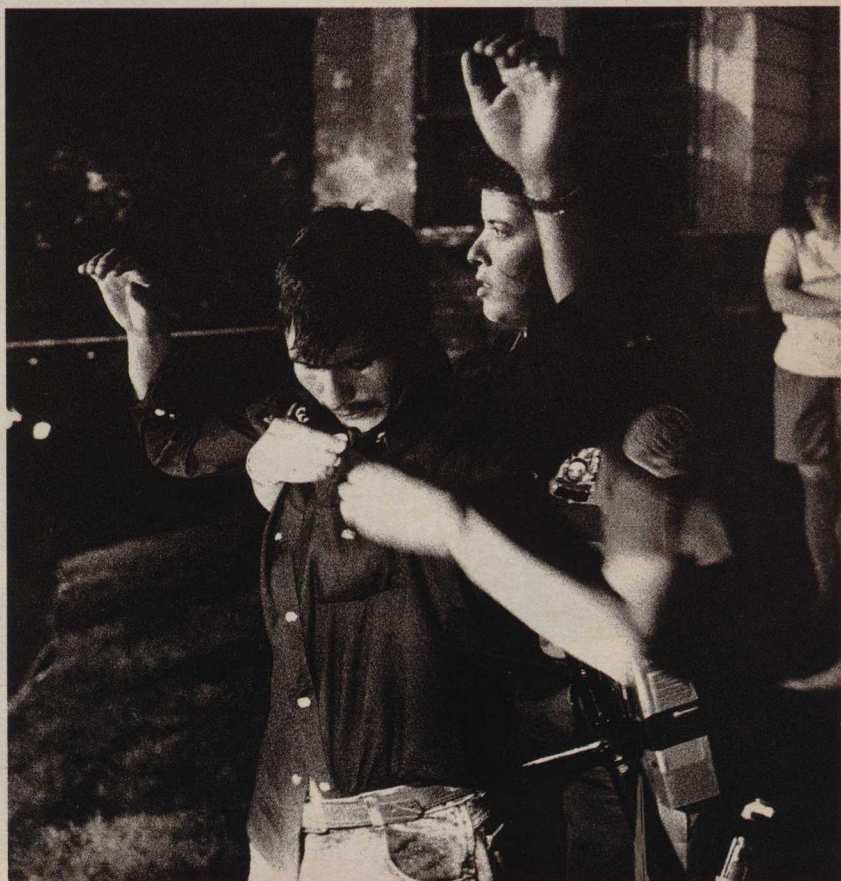
AT 7:30 A.M., OVER HER FIFTH CUP OF COFFEE, GWENN Butkovsky read the headline: Father Jailed in Baby's Death. According to *The Oregonian*, a man had confessed to smothering his nine-month-old daughter. Like everyone in Portland, Oregon's biggest city, the mother of two was disturbed by the story; unlike everyone else, within an hour she would be helping David Labenske, the man accused of the murder.

RIGHT TO COUNSEL
Lawyer Gwenn Butkovsky consoles David Labenske, 26, who has been accused of murder. In Portland, a city of 440,000 people, a single person earning less than \$524 a month is entitled to free legal help.

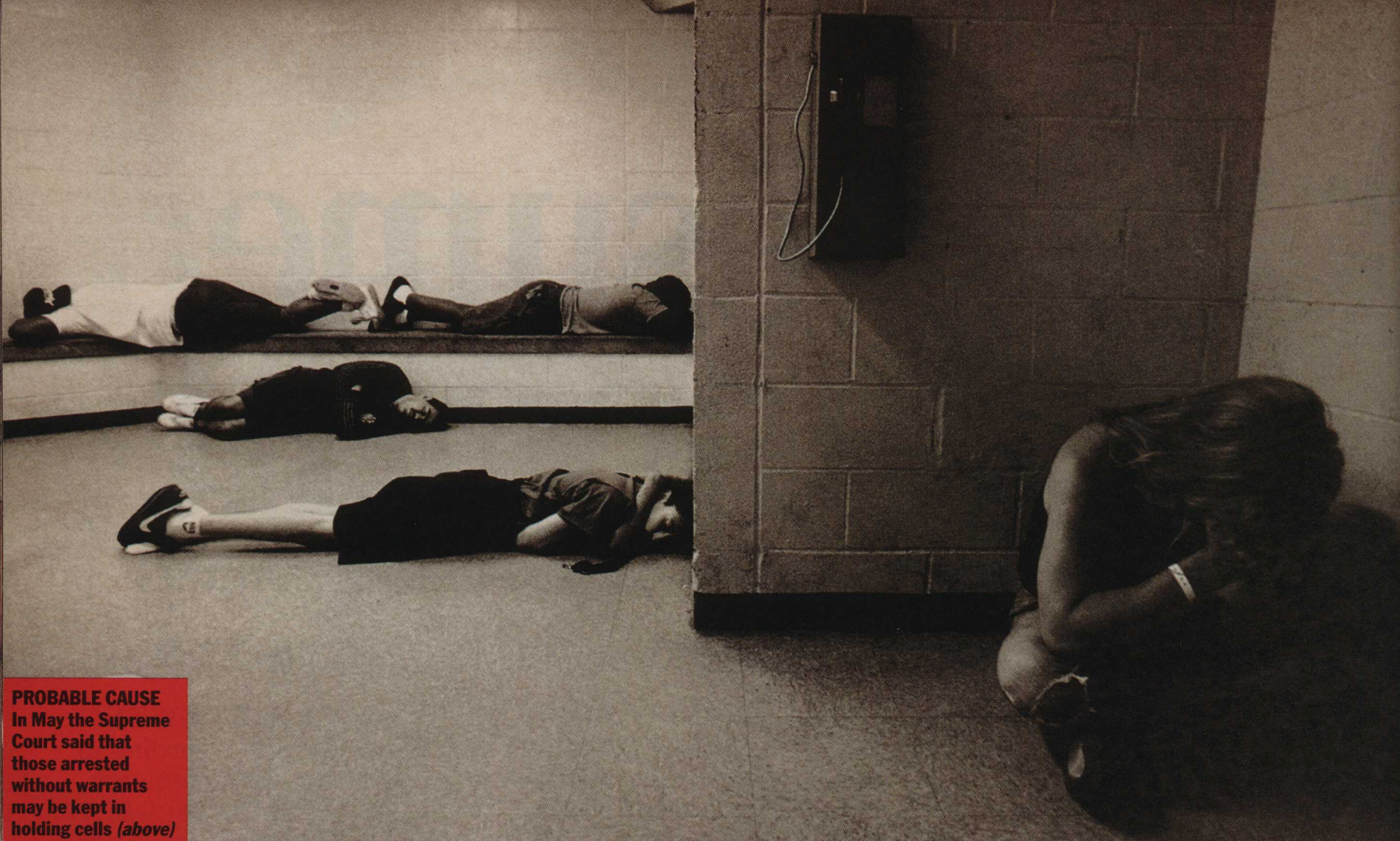
An attorney, Butkovsky, 40, is one of 34 lawyers in Portland's Metropolitan Public Defender Services Inc., a nonprofit company paid by the state to represent people who cannot afford to hire a lawyer. Tireless in protecting the rights of the accused, she is responsible at any given time for 40 or more clients accused of crimes from drug dealing to rape. But on that rare sunny morning, Butkovsky suspected that she would also have to take on her first murder case: She and colleague Jack Morris were in line for the next one. They called the court clerk to see if Labenske had requested free counsel. Like 95 percent of those arrested in Portland, he had. The lawyers walked four blocks to the jail where Labenske was held, to prepare him for the arduous process ahead, one that is played out daily in courtrooms across the nation.

Public defenders have a noble

by Barbara Maddux



SEARCH AND SEIZURE After an arrest, Officer Katie Potter may frisk a driver, but she is not allowed to give a Breathalyzer test without his consent.



PROBABLE CAUSE
In May the Supreme Court said that those arrested without warrants may be kept in holding cells (above) for up to 48 hours pending a ruling on the legality of the arrest. Below: Judge William Snouffer visits a prison infirmary to inform a defendant of the charges against her.

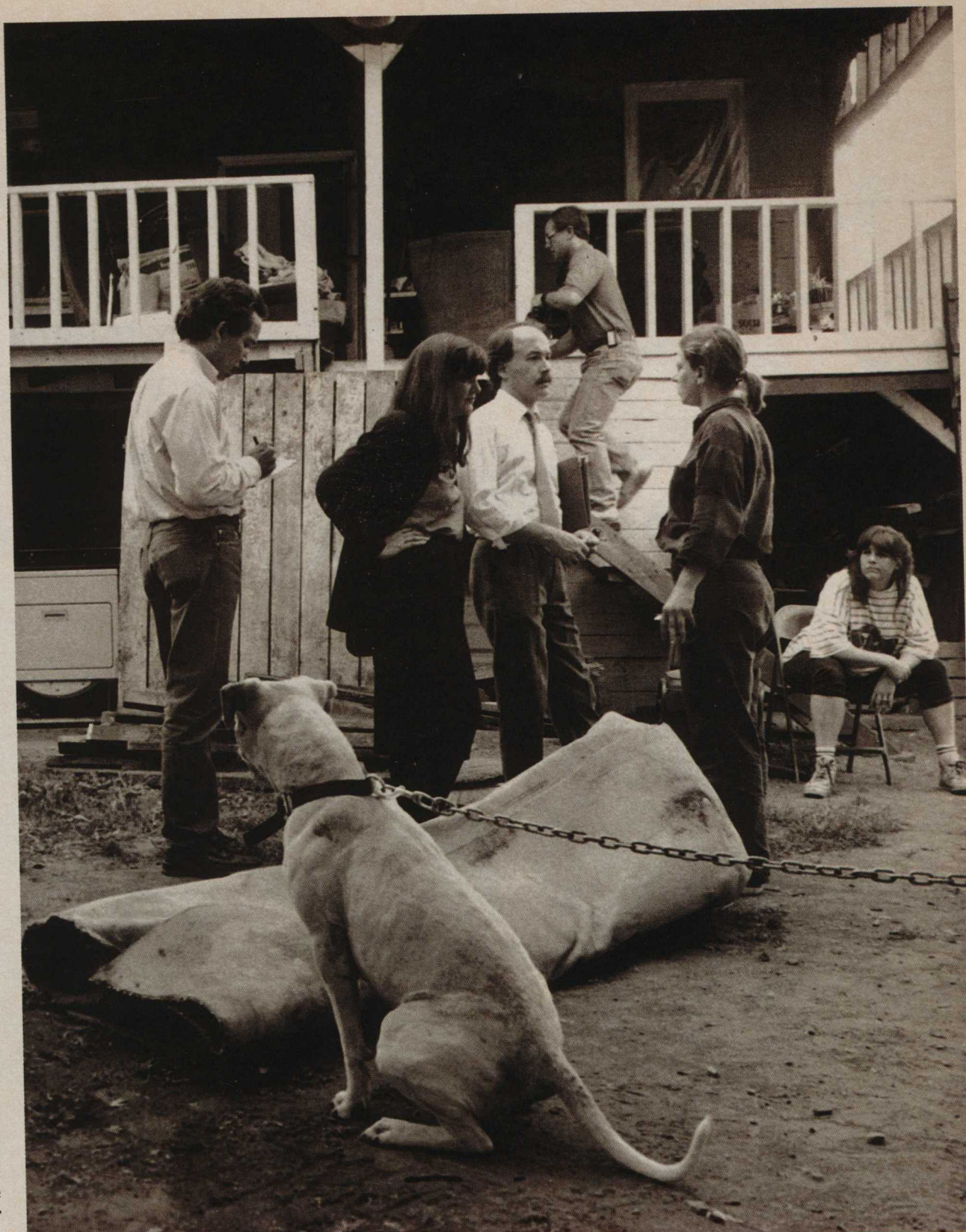


heritage grounded in the Bill of Rights, nearly half of which protect citizens accused of crime. The Sixth Amendment states: "The accused shall enjoy the right . . . to have the assistance of Counsel for his defence." In a long line of cases, beginning in the 1930s, the Supreme Court extended this to apply to all "critical stages" of the criminal trial process. Says Butkovsky, "If you're arrested, you did it—that's what people think. I'm here to remind everyone that you're innocent until proven guilty."

Labenske's arrest on August 6 was reported as follows: His father became suspicious when neither David nor his ex-girlfriend seemed to have their child. Pressed for an explanation, Labenske told his father that the baby had fallen from the upper bunk of his camper and broken her neck. He said he had suffocated her with a pillow to put her out of her misery. The elder Labenske took his son to police headquarters, where he was fingerprinted and photographed. While he was being booked, a police officer filed an arrest report with the district attorney's office, which would decide what charges to bring. The Fourth Amendment right to protection from "unreasonable seizures" requires a judge to decide within 48 hours whether the police had cause for arrest.

The day after his arrest, Labenske went before the judge. Handcuffed, he was brought into the courtroom by a hidden passage from a cell in the basement. Morris asked the court to turn over the arrest report to help the defense in preparing its case. The judge denied the motion. He denied bail too. In Portland a defendant with a job, family and no prior record may be released on his own recognizance. Otherwise a judge may set an amount deemed necessary to insure a defendant's appearance; "excessive" bail is a violation of the Eighth Amendment. But in murder cases in Oregon, the judge has the prerogative to refuse bail. Labenske was led back to jail.

His lawyers, along with two trial assistants, two investigators and a forensic expert, drove to the suburb where Labenske had parked his camper. They interviewed witnesses and measured the hole where the child's body had been buried. But the most crucial element in the investigation—the camper—had already been removed by police. Public defenders complain that the prosecution always has the edge—and unlimited



WITNESSES Butkovsky and cocounsel Jack Morris (*center*) inspect the yard where Labenske's child was buried. They exercise their client's right to obtain favorable witnesses by questioning the owner, who is too distraught to help.

At every step, an inviolable principle



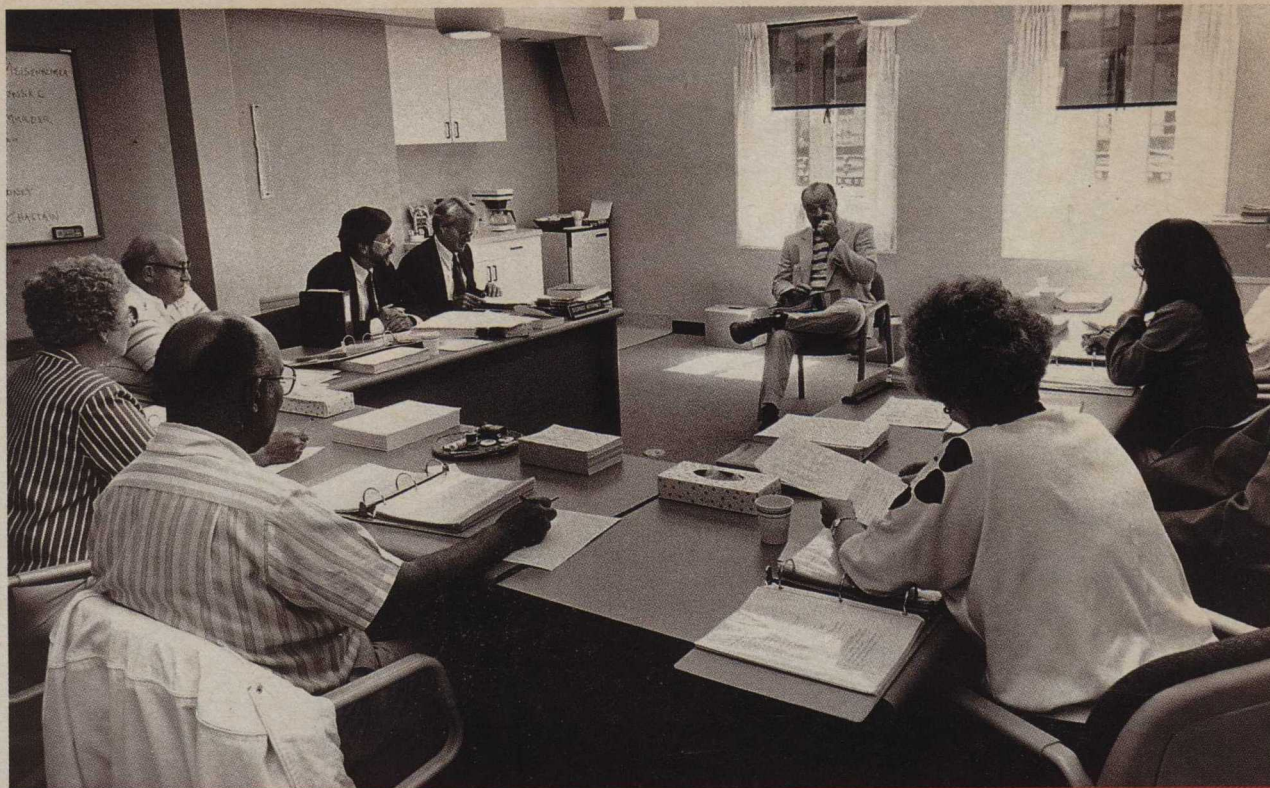
PUBLIC TRIAL
Labenske is filmed
by a local newsman
while being led
into the courtroom
for his pretrial
hearing. Secret
proceedings would
constitute a
violation of his Sixth
Amendment rights.

funds. Portland defenders are budgeted an average of \$369 per case. That covers the attorney, a trial assistant and half an investigator. Money for forensics experts, pathologists, lab fees and lie-detector tests must be granted by the court. Even judges dislike the system. As Judge William Snouffer observed, "I'm supposed to be unbiased, yet I'm ruling on issues that directly affect the defender's case."

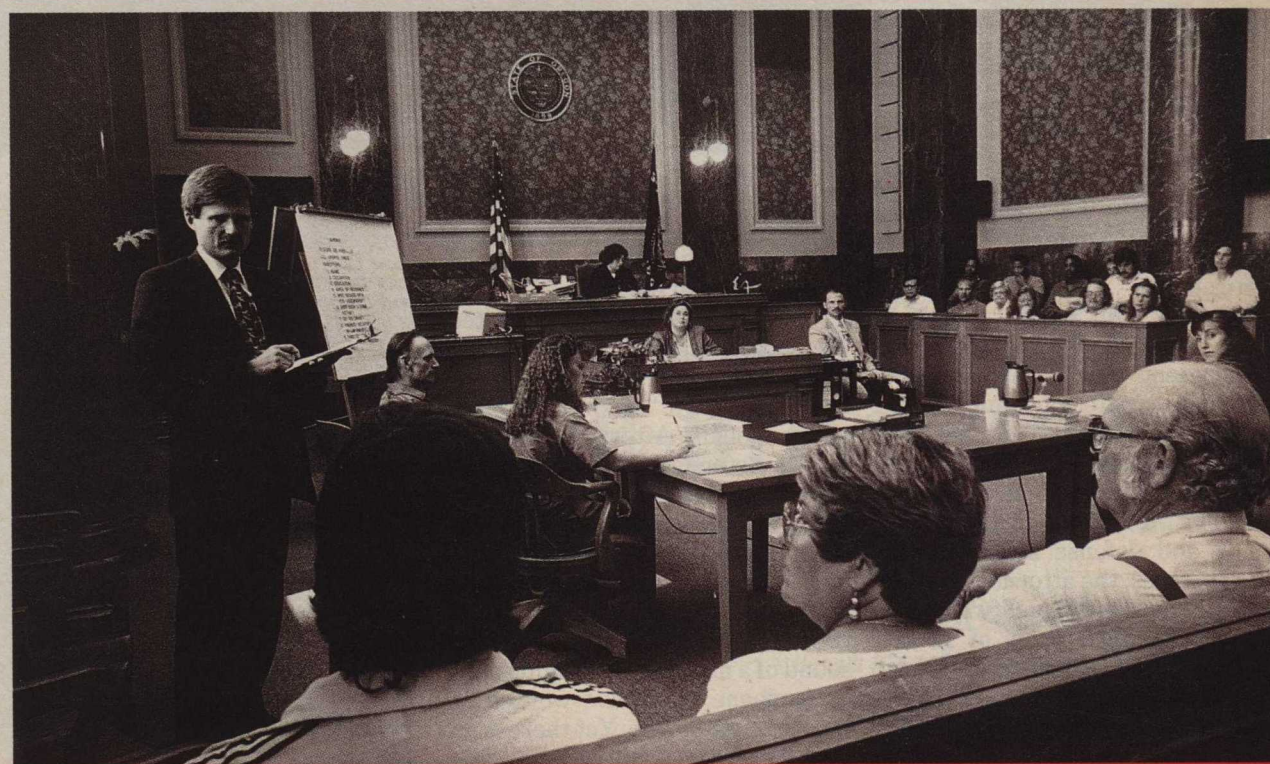
The Portland D.A. must deliver an indictment against a person in custody within five working days. The Fifth Amendment says: "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury." In Portland a grand jury consists of seven people who serve for one month and adjudicate some 30 cases each day. They hear the D.A.'s evidence to determine whether there is enough to prosecute. In theory, the grand jury protects the innocent from persecution. But since the defense is not heard, jurors usually follow the prosecutor's wishes. In Portland, as in many cities, only 1 percent of the cases is thrown out. Deliberations usually take less than 10 minutes—the time needed to decide that there is cause to prosecute.

On the day of his grand jury hearing, Labenske sat in the courtroom as Butkovsky argued, again, for release of the arrest record. Two floors above, the grand jury voted on the evidence. Before Butkovsky could finish her argument, a D.A. walked into the courtroom carrying a yellow document. The grand jury had handed down an indictment alleging that Labenske killed his daughter to conceal the crimes of criminal mistreatment, second-degree assault and fourth-degree assault. Under Oregon law, such crime is called aggravated murder; the judge charged Labenske with six counts. All carry the death penalty. Labenske was silent, his head bowed, as the indictment was read. Butkovsky couldn't help crying. "I've always been against the death penalty," she later said, "but I never knew how much until that moment."

Morris rose to say that he and Butkovsky would have to be removed from the case. It is the Metropolitan Public Defender's policy to refuse to handle death penalty cases, because it does not have enough funds to defend such serious charges. A private attorney, paid by the court, would have to be assigned. Court was adjourned,

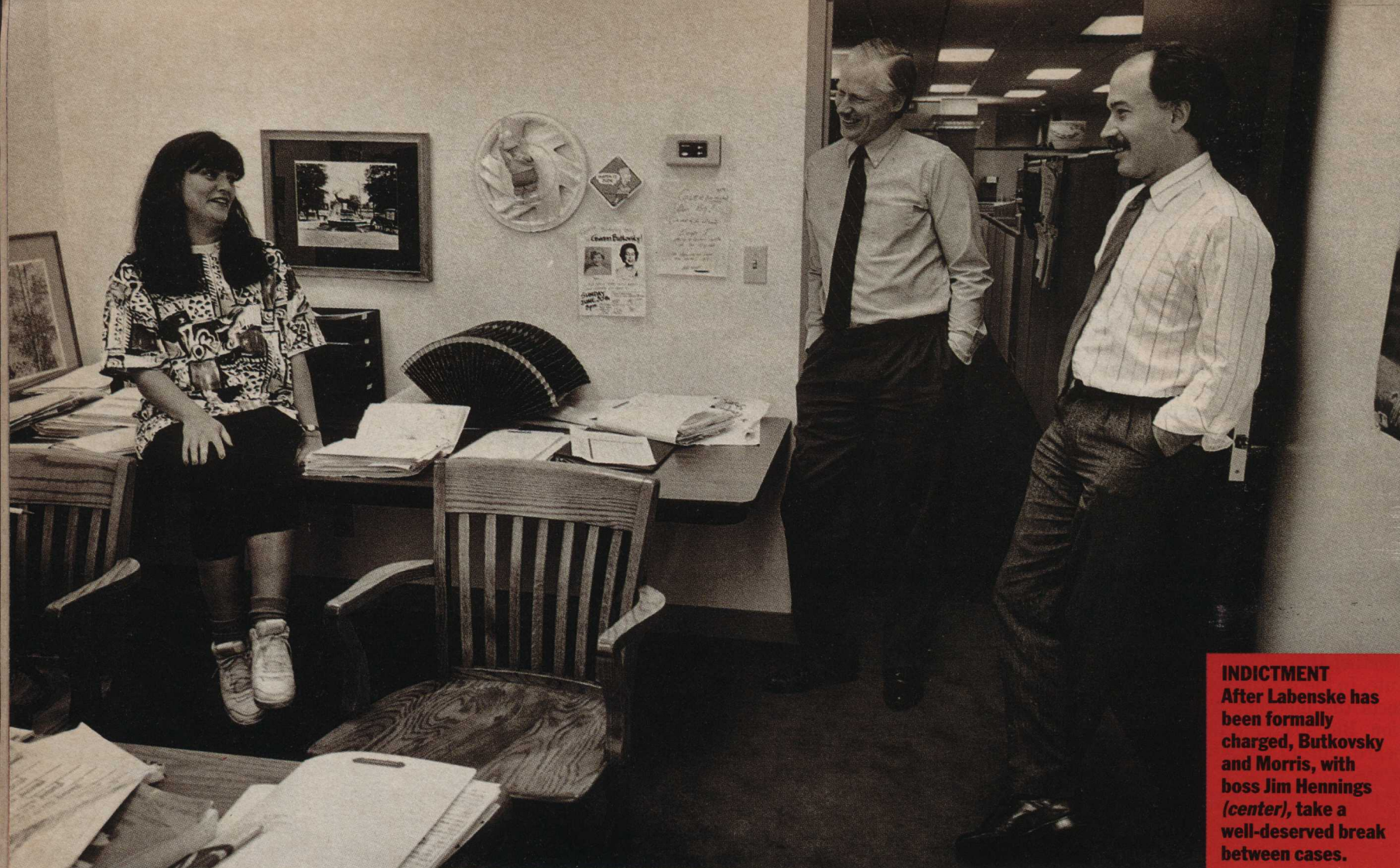


GRAND JURY A panel of jurors interviews Detective Larry Findling to determine if the district attorney's office has enough evidence to formally charge Labenske with murder. After two and a half hours they rule that it is sufficient.



JURY During voir dire, Public Defender Wil Smith questions prospective jurors for a stolen car case. To guarantee his client's right to an impartial jury, he spends a half hour asking a dozen questions about their backgrounds.

Finally, judgment by peers



INDICTMENT
After Labenske has been formally charged, Butkovsky and Morris, with boss Jim Hennings (center), take a well-deserved break between cases.

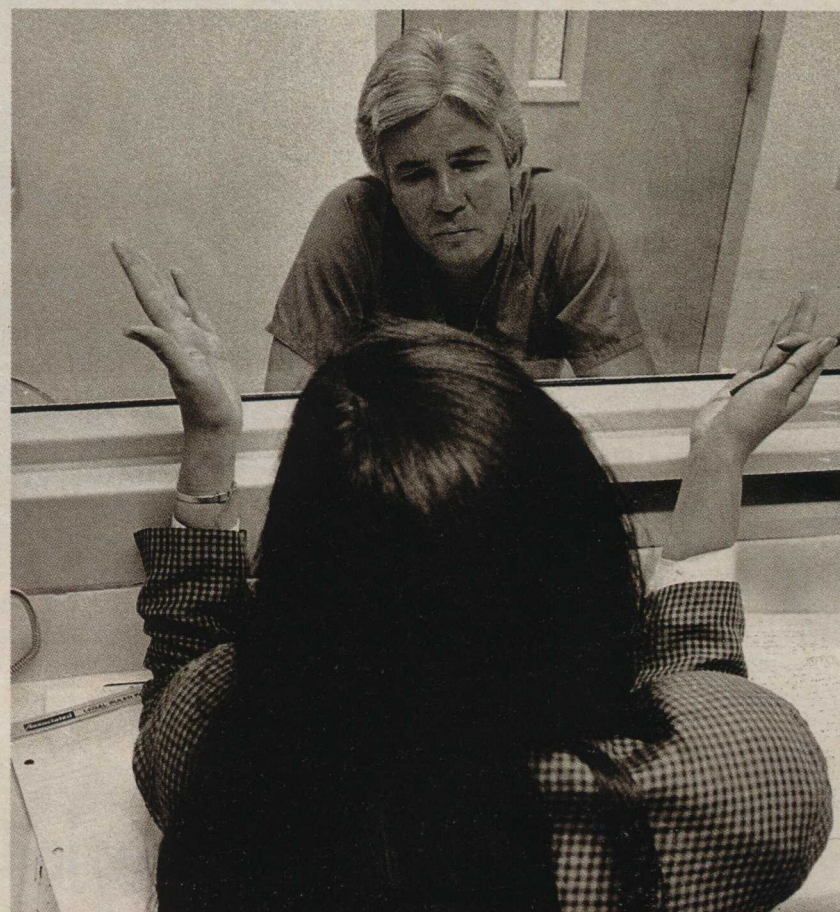
and Labenske was led back to jail to wait until January 13.

On that day he is scheduled to exercise his Sixth Amendment right to a trial by an impartial group of peers. Every two weeks the Portland court summons 2,000 citizens to create a pool of 200 jurors. In a process called the voir dire, Old French for "to tell the truth," they are sworn in and questioned on their biases by the prosecuting and defense attorneys. In murder cases, the attorney on each side is allowed to disqualify 12 without cause until a panel of 12 remains. Such a jury will decide if Labenske lives or dies.

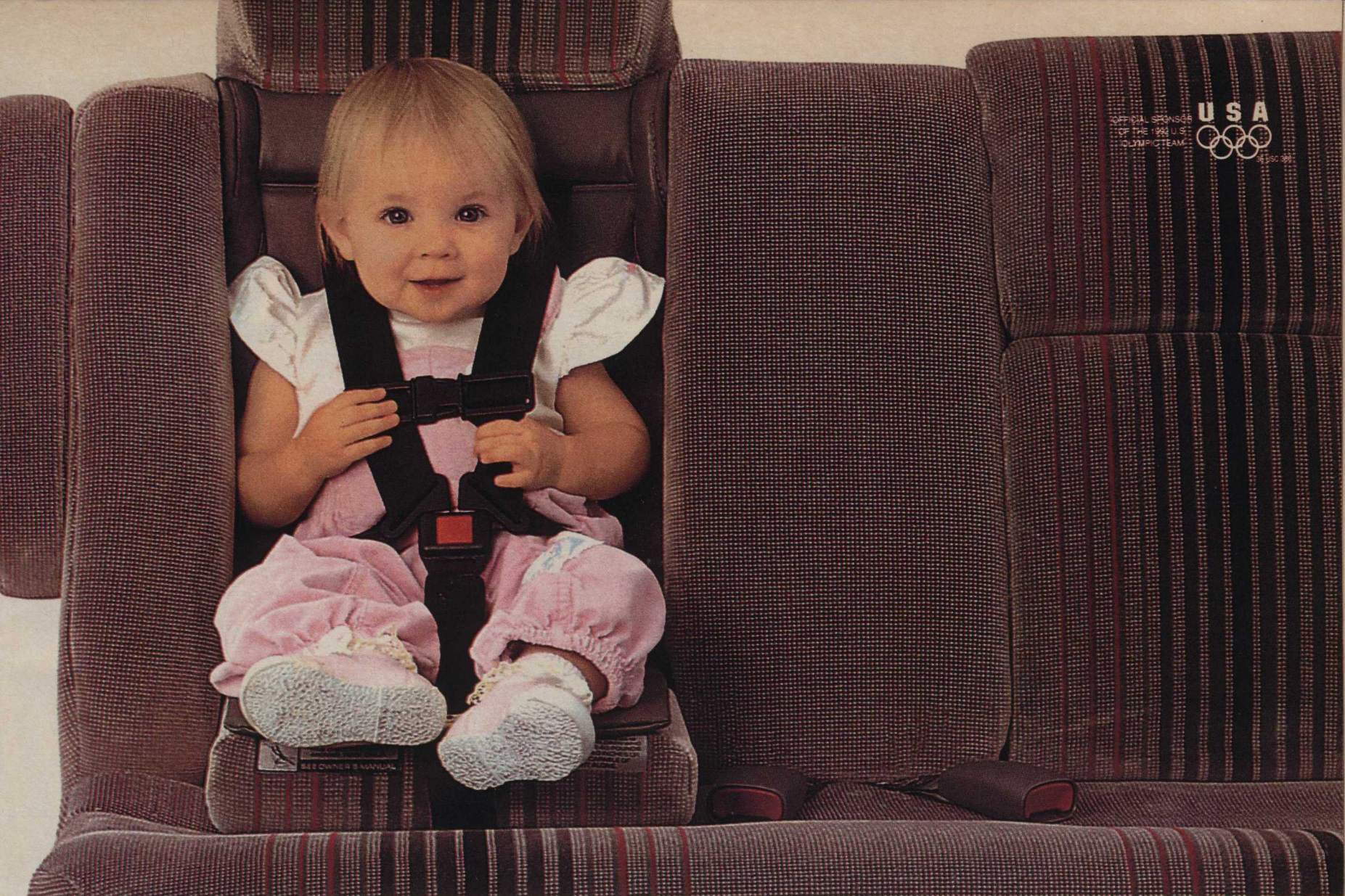
The Metropolitan Public Defender handles some 15,000 cases a year. Its lawyers investigate 30 percent of them for trial; only 7 percent (about 2 percent higher than the national average) actually go to trial. The remaining 93 percent are dismissed or settled by plea bargaining. Since there isn't money or space to hold or try everyone, the prosecution and the defense agree to drop the most serious charges in exchange for a guilty plea to a lesser crime. Most Portland defendants waive the right to trial by jury—especially after they learn that fewer

than 3 percent of felony trials end in acquittal. But due to the gravity of the charges against him, Labenske was denied that option.

Butkovsky and Morris visited their former client once more. "We spent at least an hour with him," Butkovsky says. "We were all pretty emotional." Afterward, the dejected defenders went to a bar down the street and had a beer. Their job takes its toll. If public defenders know that a client has committed a crime, they still must do their best to defend him. And if they feel sympathy for a client, the sound of a metal door clanging shut on someone they have worked to help is a painful one. Yet there is an in-the-trenches camaraderie. Satisfaction seldom comes from getting defendants off, but rather from knowing that their interests have been protected. Butkovsky passionately believes that it is to the great glory of our nation that it recognizes the rights of the accused. As the formative English jurist Sir William Blackstone said in the 1760s, "It is better that ten guilty persons escape than one innocent suffer." If the rights of even the least deserving are not held inviolable, then no one's are. ☆



PUNISHMENTS Butkovsky advises her next client to plead guilty to a drug charge in exchange for a lighter prison sentence and alcoholism treatment.



We think a lot of people will go ga ga over our new built-in child seats.

Dodge Caravan already offered a combination of available safety features no other minivan could match. And now, the first minivan introduces another first: the industry's only available built-in child seats.



Child seat closed.



Child seat opened.

Child shown in booster seat.

Designed for toddlers from 20 to 40 pounds, they're easily accessed. Their five point harnesses are simple to adjust. And

one of the seats can even serve as a booster seat for an older child.

When they aren't in use, they disappear and you've got a bench seat that comfortably accommodates two adults.

So if you have little ones, talk baby talk with your

Dodge dealer. He'll tell you all about our latest arrival...and show you why Dodge Caravan is America's favorite minivan.

Rediscover American Value.

Call 1-800-4-A-DODGE for a free product brochure.



Advantage: Dodge

Dodge Caravan ES



BUY OR LEASE AT YOUR DODGE DEALER.
Buckle up for safety.
See limited warranty at dealer, exclusions and restrictions apply.

A Long

Jour



DAWN HAD NOT YET BROKEN ON AUGUST 27, 1985, when Terrance Bostick, 29, got on a Greyhound bus in Miami. With a long trip to Atlanta ahead, he settled his big frame into the large back row, and the bus pulled out. Bostick didn't know it, but that morning was the beginning of a six-year ride through the judicial system of the United States. On the following pages, LIFE retraces one route a Bill of Rights case can take.

It was light by the time the bus stopped at the terminal in Fort Lauderdale 30 miles north, and detectives Joseph Nutt and Steven Rubino, deputies from the Broward County Sheriff's Office, climbed aboard. They wore plainclothes topped by "raid jackets"—green windbreakers with the sheriff's insignia. Nutt carried his gun in a hand-held pouch. Rubino's was in his waistband. The driver left the bus to check in with the dispatcher and get a cup of coffee. He closed the door, leaving inside the handful of passengers and the deputies, who walked down the narrow aisle directly to the rear of the bus. What happened next is still in dispute.

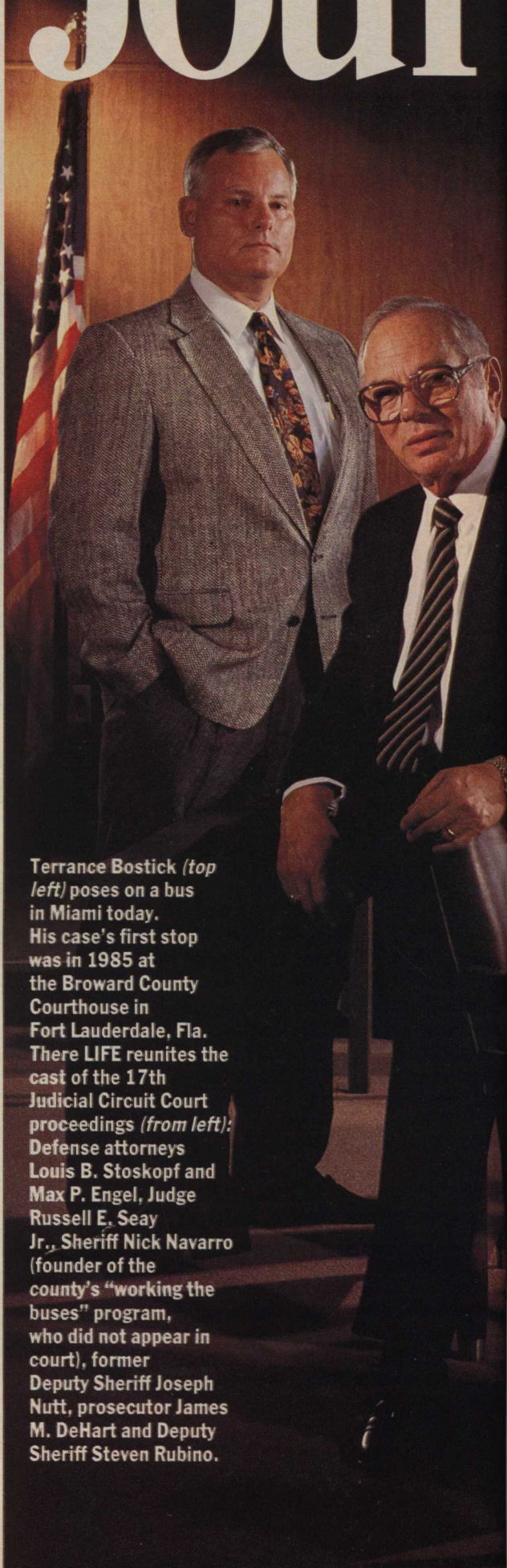
The officers say that they approached Bostick, who was awake, identified themselves and asked if he would speak with them. When he agreed, they asked where he was traveling and for a look at his ticket and identification. The deputies say that after they explained their duties as narcotics agents and asked if he had any luggage, Bostick pointed to a red carry-on bag

by Melissa Goodman

he was using as a pillow. The officers say they then asked for—and got—Bostick's permission to search the bag, and that they advised him of his right to refuse their request. Then they asked if a blue bag in the overhead rack was also his. Bostick said it was. The officers say they received permission to search that bag too.

Bostick, however, says that he was asleep when he was tapped on the foot and asked where he was going. The deputies, he says, did not identify themselves, but he realized that they were police and cooperated. Bostick says the officers never explained why they were questioning him, nor did they advise him that he had the right to refuse their search. He let them look in the red bag, which had actually been lent to him by another passenger. But, Bostick claims, the officers did not receive his permission to search the blue bag.

There is no dispute about what happened next: The blue bag contained nearly a pound of cocaine. Bostick was immediately arrested for cocaine trafficking, which is a felony, handcuffed and removed from the bus.



Terrance Bostick (top left) poses on a bus in Miami today. His case's first stop was in 1985 at the Broward County Courthouse in Fort Lauderdale, Fla. There LIFE reunites the cast of the 17th Judicial Circuit Court proceedings (from left): Defense attorneys Louis B. Stoskopf and Max P. Engel, Judge Russell E. Seay Jr., Sheriff Nick Navarro (founder of the county's "working the buses" program, who did not appear in court), former Deputy Sheriff Joseph Nutt, prosecutor James M. DeHart and Deputy Sheriff Steven Rubino.

ney

One case travels from a bus in
Florida to the U.S. Supreme Court



State v. Bostick

17th Judicial Circuit Court
FORT LAUDERDALE



BOSTICK IS ARRESTED IN THE course of a drug interdiction program known as "working the buses." Broward deputies were boarding buses during scheduled stops and randomly asking travelers for ID and permission to search their bags. The Fourth Amendment forbids "unreasonable searches and seizures." By law, police must have "probable cause" or a warrant to search an individual's person or property. They had neither. Bostick had the right to say no without incriminating himself. But if he agreed, the search was legal. The crux of the matter is if Bostick had consented, and if he did so freely or because he was coerced.

Bostick consults with Max P. Engel, a lawyer recommended by a friend, and pleads not guilty. After 17 days in jail, his bond is reduced to \$10,000, and he is released. Engel's colleague, Louis B. Stoskopf, files a challenge to the drug charges, a motion to suppress the evidence—the cocaine and some marijuana discovered on Bostick at the sheriff's office. Without the drugs, the prosecution would have no case. The defense charges that the officers lacked cause, had questionable authority to enter the bus and were not authorized by Bostick to go through his belongings. Even if the police believed he had agreed, says the defense, "the intimidating circumstances" made his consent invalid and the search illegal.

Both sides meet in the 10th-floor courtroom (*preceding page*) of Judge Russell E. Seay Jr. for a hearing on the motion. The deputies testify. Bostick appears on his own behalf. Stoskopf asks, "Is it your testimony here today that you would not voluntarily consent to any search of your bag, particularly when it might have contained drug substances?"

Bostick answers, "Right."

The prosecutor, Assistant State Attorney James M. DeHart, cross-examines. "Did you ever tell them to stop, don't search this bag?" he asks.

"No, sir," Bostick says.

Later Judge Seay discusses the case with the lawyers. "It's very intimidating even if there is consent," he says. "But I guess the police can step on a bus and walk up and say, 'Can we check your bag?'"

DeHart concurs that the questioning was simply "a social interaction." But the bus, Stoskopf counters, is a confined place. "It's not like he's going through the electronic thing at a terminal, where he can go back out and get in a taxi," he says. "What is he going to do, walk off the bus and be stranded?"

On August 4, 1986, in a terse form letter, Judge Seay announces that the motion to suppress is denied. The defense now has to consider the consequences of actually going to trial. A conviction would mean at least a 15-year sentence. Bostick chooses the more certain path: On the day the trial is to start, prosecutor DeHart announces that, in return for a guilty plea, the state will recommend five years in prison and two years' probation. In October, more than a year after his arrest, Bostick goes to jail.

Bostick v. State

Fourth District Court of Appeal
WEST PALM BEACH



THE MOTION TO SUPPRESS BECOMES the needle that threads the case through the court system. As part of the plea bargain, the defense lawyers had carefully retained Bostick's right to appeal the decision allowing the drugs as evidence. On the same day as his sentencing, Bostick's attorneys file the appeal with the state's Fourth District Court of Appeal. They will wage the battle without their client: He is in jail, and in Florida drug trafficking offenders are not free during appeals. Bostick does not have the money to pay for their services, but his attorneys believe that the case is an important one, and they are representing him *pro bono*, for free.

The case is now fought mostly by trading "briefs," or written arguments, read by the three judges randomly assigned by the court clerk to hear the case. The first brief, filed in December 1986, argues that Judge Seay's decision be reversed. Say Bostick's attorneys, "The show of official authority by the police in this case would lead any reasonable person to the conclusion that they were not free to disregard the officers' questions and walk away."

The state responds. The Florida attorney general's office represents the state in appeals. Assistant Attorney General Georgina Jimenez-Orosa does the work on this case. She continues the earlier argument that Bostick's questioning was "a mere contact" and "involved no coercion or detention."

Bostick's side counters: "The [state] would impose the duty upon the passenger to leave the transportation he has chosen and paid for in order to avoid an allegedly 'consensual encounter' with the police."

Each party has 20 minutes to convince the judges in person. On March 27, 1987, Kenneth P. Speiller, the attorney from Engel's office who is now assigned to Bostick's case, reprises his side's arguments in the windowless courtroom. When the clock says his time is up, Jimenez-Orosa gets her turn. Twelve days later, it is clear that the State of Florida has prevailed: The judges announce that the lower court's decision is affirmed unanimously.

But the law allows Bostick one more chance. Speiller files a request that the judges reconsider. Two judges deny the petition for rehearing, but this time there is one dissent: Judge Gavin K. Letts has changed his mind and argues for a ruling in favor of Bostick. Since the majority prevails, the case would ordinarily be closed. But Letts now convinces his colleagues that the larger issue of bus searches is important. The tribunal recommends that the state's highest court consider the following question: "May the police without articulable suspicion board a bus and ask at random for, and receive, consent to search a passenger's luggage where they advise the passenger that he has the right to refuse consent to search?" Terrance Bostick's Fourth Amendment rights, the courts have ruled, were not violated. But what of future travelers' rights? The case ascends.

T

he Fourth District Court of Appeal, one of five state appeals courts in Florida, has jurisdiction over Broward County. From a staff of nine judges, the court has assigned (from left) James H. Walden, Gavin K. Letts and Barry J. Stone. Appearing before them are Kenneth P. Speiller for Bostick, the appellant, and Georgina Jimenez-Orosa for the State of Florida, the appellee.





GAVIN K. LETTS

BARRY J. STONE

Bostick v. State

Florida Supreme Court

TALLAHASSEE

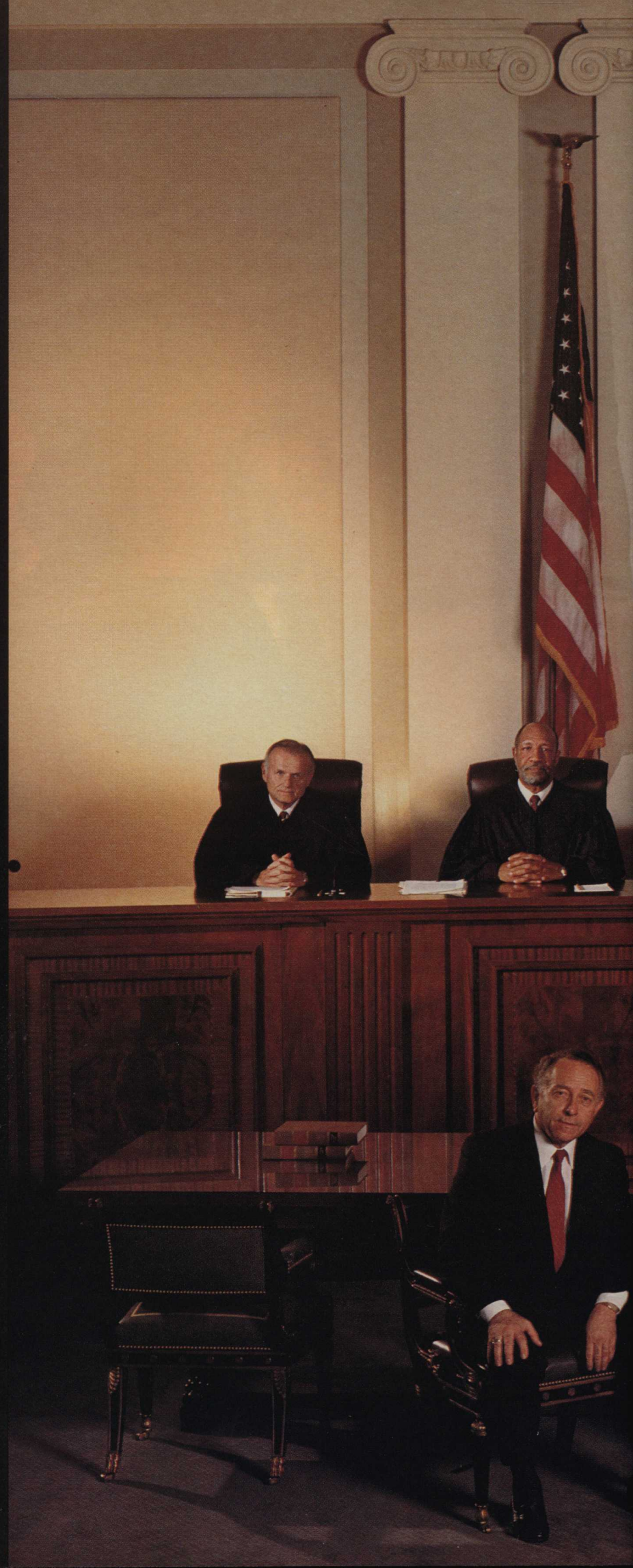


THE CASE MOVES TO THE highest court in the state. The constitutionality of "working the buses" is now the question; Bostick's is not the only case to challenge the searches, but it becomes the representative one. Two additional lawyers ask the court for permission to add their arguments to those of Speiller and Jimenez-Orosa. Such a participant is called amicus curiae, or "friend of the court," a person or group allowed to present another view of the case. Amicus for Bostick is Joseph S. Paglino, a lawyer who volunteers his time because he is interested in civil rights issues. He files a fiery brief, calling the bus searches a "pernicious evil." On the other side is amicus Edward A. Hanna Jr., a former federal prosecutor who joins the case on behalf of Sheriff Navarro. Hanna tells the court that in the past year and a half more than 775 pounds of cocaine, 3,600 pounds of marijuana and 45 firearms have been seized from bus passengers in Broward County.

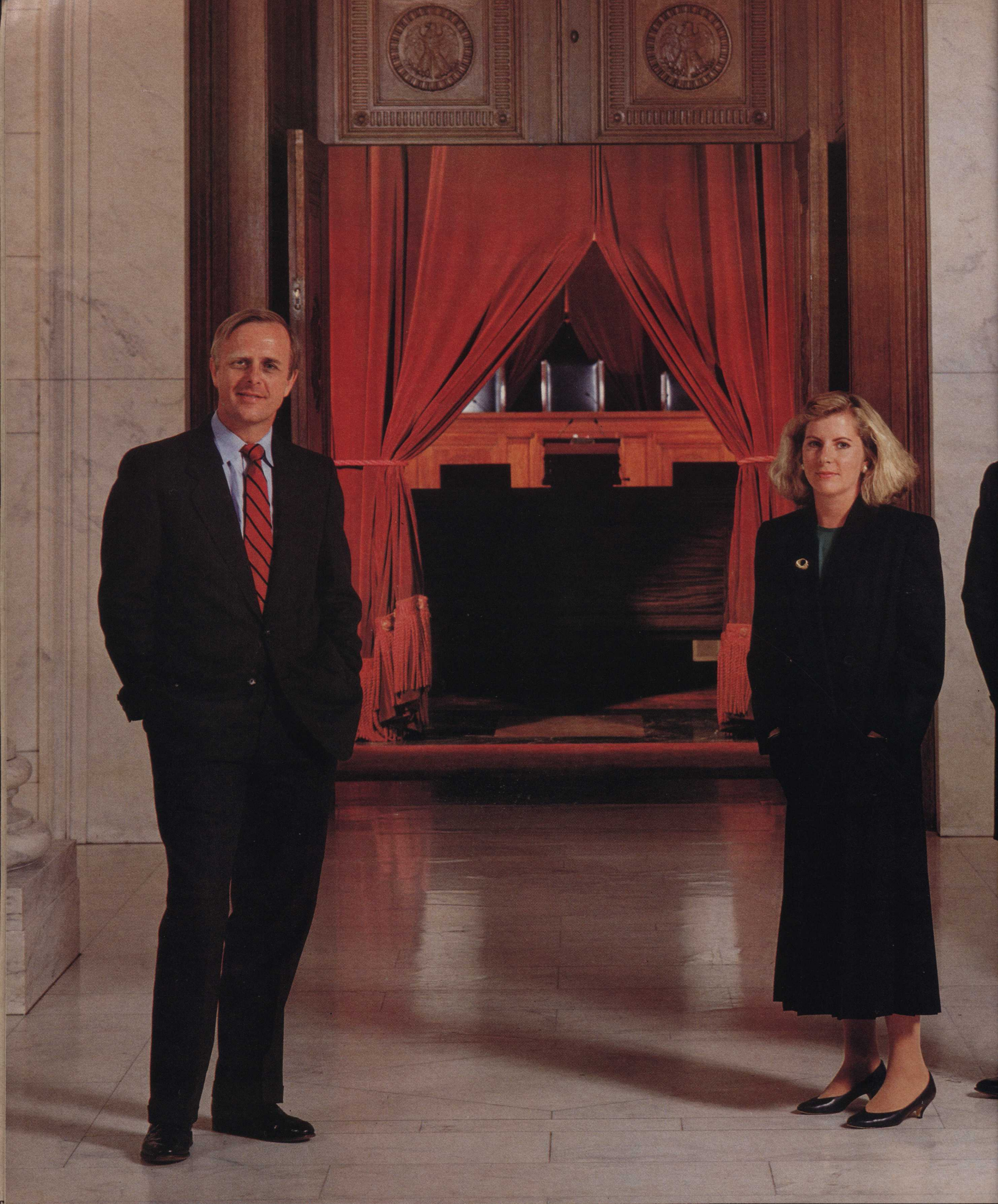
Oral arguments are presented in March 1988. Jimenez-Orosa shares with Hanna the 20 minutes she has to plead the state's case. Speiller, appearing alone, uses his time to advantage. In November 1989 the justices announce their decision. By a vote of 4-3, they rule in favor of Bostick. The majority rephrases the appeals court's question and asks: "Does an impermissible seizure result when police mount a drug search on buses during scheduled stops and question boarded passengers without articulable reasons for doing so, thereby obtaining consent to search the passengers' luggage?" Justices Rosemary Barkett, Raymond Ehrlich, Leander J. Shaw Jr. and Gerald Kogan answer with a resounding yes. Bostick was "seized," they say, and any consent given "tainted." Further, that the encounter occurred on a bus was significant because there was "no place to which a reasonable traveler might leave." The opinion ends in a blistering indictment: "Roving patrols, random sweeps and arbitrary searches or seizures would go far to eliminate [drug courier] crime in this state. Nazi Germany, Soviet Russia and Communist Cuba have demonstrated all too tellingly the effectiveness of such methods. Yet we are not a state that subscribes to the notion that ends justify means."

The justices quash earlier rulings in Bostick's case and five similar ones. Bus searches are stopped. But in April 1990 the Florida attorney general's office announces that it is taking the case to the U.S. Supreme Court. It no longer matters much to Bostick—he has finished his sentence more than a year before, with time off for good behavior. At best, the conviction would be removed from his record.

In 1988 the case is argued before the Florida Supreme Court. Petitioner Bostick and respondent Florida each have a pair of lawyers. Kenneth P. Speiller (standing at left of podium) is supported in a brief by Joseph S. Paglino (seated), and Georgina Jimenez-Orosa is joined by Edward A. Hanna Jr. (far right). At the bench (from left), justices Stephen H. Grimes, Leander J. Shaw Jr., Ben F. Overton, Parker Lee McDonald, Raymond Ehrlich, Rosemary Barkett and Gerald Kogan rule.







B

ehind the velvet curtains (left) is the courtroom where the nine justices of the U.S. Supreme Court hear the *Bostick* case. Attorney Donald B. Ayer (far left) represents Bostick, now called the respondent. Arguing for Florida, the petitioner, is attorney Joan Fowler. Joining her in amicus is U.S. Solicitor General Kenneth W. Starr, in the morning coat traditionally worn by men from his office when arguing in Court. Top right: Supporting troops behind the scenes line up (back row, from left): for Bostick, professor Mary Irene Coombs, author of the ACLU brief, and Robert H. Klonoff with Barbara McDowell, both of Ayer's firm, Jones, Day, Reavis & Pogue. For Florida are the state's attorney general, Robert A. Butterworth, in whose name Florida's case is presented, and Senior Assistant Attorney General James W. Rogers. For the United States are Deputy Solicitor General William C. Bryson, Department of Justice Attorney Kathleen A. Felton and Assistant to the Solicitor General Christopher J. Wright.



Florida v. Bostick

U.S. Supreme Court
WASHINGTON, D.C.

HAD THE CASE NOT CONTAINED a question of federal law, it would have ended in Tallahassee. But *Bostick* has two ingredients that make it ripe for review by the nation's highest court: the Fourth Amendment challenge and a 1982 clause in Florida's constitution mandating that the state's "search and seizure" laws be interpreted in the same way that the U.S. Supreme Court interprets the Fourth Amendment. After reading petitions, at least four of the justices agree to hear the case, one of 125 they will adjudicate in the 1990-91 term.

The American Civil Liberties Union and the National Association of Criminal Defense Lawyers join forces in an amicus brief for Bostick. They get unexpected support from Americans for Effective Law Enforcement, a pro-police group that files its first-ever Supreme Court brief against a law enforcement agency. "It is difficult to imagine a scenario of police activities, as in the present case, upon a planeload of business class air passengers arriving at a busy air terminal," it says. One concern is that similar practices might someday be used in "school-rooms, places of entertainment, offices."

At 10 in the morning the Court hears oral arguments on *Bostick*, the first of two cases on February 26, 1991. Florida, now represented by Joan Fowler, a senior assistant attorney general for the state, maintains that the state's supreme court should not have ruled the bus searches illegal, nor said that Bostick's was. Fowler shares her precisely timed 30 minutes with U.S. Solicitor General Kenneth W. Starr, representing the Bush administration. The solicitor general per-

sonally argues about seven cases each year in the Supreme Court. The government's point of view, he says, is that Bostick was not seized—all he had to do was decline to talk to the deputies and wait for the bus to leave.

Then it's Bostick's turn. Donald B. Ayer, a former U.S. deputy attorney general, has never met his client; they've spoken only by phone. Ayer's Washington, D.C., law firm was interested in the case and offered its services *pro bono*. Ayer argues that Bostick was illegally seized the moment the officers zeroed in on him. "If you were sitting in a restaurant and an officer came into the restaurant in uniform," he says to the justices, "and he came directly to your table, and he addressed you and asked you for your driver's license, the assumption I think most people would make would be that the officer was there to carry out some specific, purposeful mission."

Four months later the Court announces its decision in favor of the state. "Bostick's movements were 'confined' in a sense, but this was the natural result of his decision to take the bus," writes Justice Sandra Day O'Connor for the 6-3 majority of Chief Justice William H. Rehnquist and Justices Byron R. White, Antonin Scalia, Anthony M. Kennedy and David H. Souter. That the incident takes place on a bus, they rule, is not enough to make the search illegal. All the facts need to be weighed to decide if "a reasonable person," an innocent person, would feel free to "terminate the encounter." Justices Thurgood Marshall, Harry A. Blackmun and John Paul Stevens dissent. "The majority blames [the] respondent for his own sensation of constraint," writes Marshall. "The Fourth Amendment clearly condemns the suspicionless, dragnet-style sweep of intrastate or interstate buses."

The Supreme Court rules that "working the buses" can be constitutional. Bostick's case is returned to the Florida Supreme Court, which must reconsider it in light of the higher court's decision. Terrance Bostick himself, who lives in Florida with his wife and three children, learns of the Supreme Court's decision on TV. Bus searches have resumed in Broward County. ☆



Give a Classic Holiday Gift.

LIFE

Save 32%* off the cover price when you
give the gift of LIFE. Plus, receive
FREE: the LIFE Calendar for 1992.



Name _____ (Please Print)

Address _____

City _____

State _____

Zip _____

Send a FREE LIFE 1992 Calendar, gift card and bill to me:

Name _____

Address _____

City _____

State _____

Zip _____

Check One:

☐ Bill me in 3 installments of \$9.99 each.

☐ Full payment of \$29.97 is enclosed.

In Canada: 14 issues/\$37.47, subject to G.S.T. *LIFE's annual cover price:
14 issues/\$44.30.

LIAVYX3US

LIAVY1CA

L83B



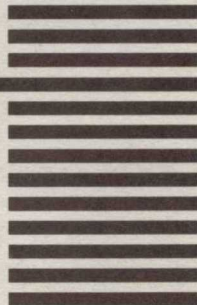
FREE
with your paid
subscription

NO POSTAGE
NECESSARY
IF MAILED
IN THE
UNITED STATES

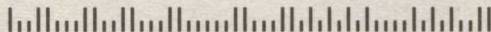
BUSINESS REPLY MAIL

FIRST CLASS MAIL PERMIT NO. 22, TAMPA FL

POSTAGE WILL BE PAID BY ADDRESSEE



PO BOX 61592
TAMPA FL 33661-1592



***** S A V E *****

\$15.00

ON THE PURCHASE OF ANY
RELIANCE STA-KLEEN
SELF-CLEANING WATER HEATER!

Sta-Kleen Model # _____ Serial # _____



RELIANCE
WATER HEATER COMPANY



TO THE RETAILER: This coupon is good only on the purchase of a Reliance Sta-Kleen Lifetime 805 or 502 self-cleaning water heater. Any other use constitutes fraud. Limit one coupon per purchase. Reliance will reimburse you for the face value of this coupon plus 8¢ handling if submitted in compliance with Reliance Water Heater Company Coupon Agreement. Consumer must pay sales tax. Void where prohibited/taxed/restricted. Cash value 1/100¢. For redemption mail to: **RELIANCE WATER HEATER COUPON, P.O. BOX 7815, MOUNT PROSPECT, ILLINOIS 60056-7815.**

OFFER EXPIRES 11/30/91

Changing the Way America Heats Water!

The frugalest way to heat water just got frugaler.

Economy, efficiency, a \$15 discount:

it's a dream of a deal for Scrooges and penny-pinchers
—as well as many nice, normal budget-minded folks.

Something you'll fully appreciate after you've bought a
Reliance Sta-Kleen™ gas water heater.

The first thing you'll notice is how little it costs
to heat water with gas—half as much as electricity.

The next thing you'll appreciate is Sta-Kleen's self-cleaning benefits,
the way it prevents sediment from building up in the tank.

Finally, should you ever have a problem
with your Sta-Kleen gas water heater,
Reliance has 8,000 service people, ready to help,
coast-to-coast.

Clip out this coupon today.
Take it to your nearest Reliance retailer.
And start saving.



© 1991 AMERICAN GAS ASSOCIATION

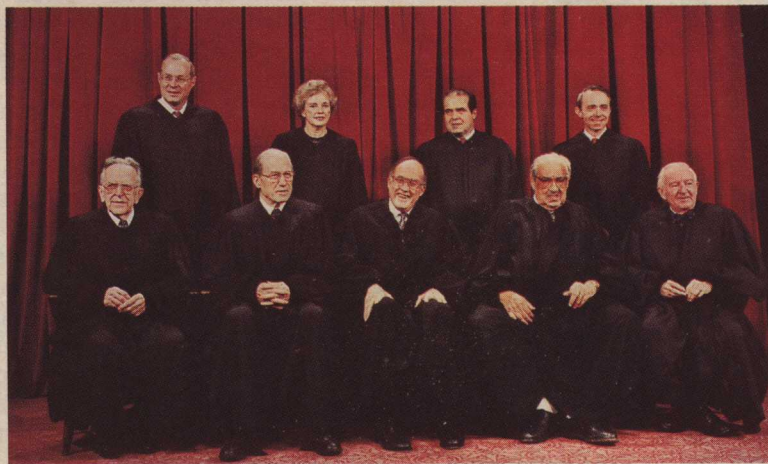
Clean natural gas.
America's best energy value.

Law & Order

The pendulum swings in high court rulings



Among the hundreds of decisions handed down every decade by the Supreme Court, almost none are so sweepingly powerful that overnight they change the way this nation goes about its business. Arguably, the last such ruling was made in 1973 when abortion was legalized by *Roe v. Wade*. Before that, the nearest blockbuster case came in 1966, when the Court, led by Chief Justice Earl Warren, decided in *Miranda v. Arizona* that every person suspected of a crime had to be read his Fifth and Sixth Amendment rights to remain silent and to consult an attorney before police questioning. This practice has since become etched in the



The Rehnquist Court of 1990-91 has limited some defendant rights. Clockwise from top left: Anthony M. Kennedy, Sandra Day O'Connor, Antonin Scalia, David H. Souter, John Paul Stevens, Thurgood Marshall, William H. Rehnquist, Byron H. White, Harry A. Blackmun.

country's consciousness by every crime show on television.

Warren saw "nothing new" in the *Miranda* decision, just a protection of "the poor, the ignorant and the unwary" that the framers, he felt, clearly intended. But in every jailhouse, every criminal attorney's office, every judge's chamber and especially every police station in the nation, *Miranda* sparked a shout of protest that can be heard to this day in the grumblings of some criminal justice officials. The complaints of cops centered on their belief that the decision would make confessions almost impossible to get.

"Damnedest thing I ever heard," a Garland, Tex., police chief pronounced in 1966. "We may as well close up shop." Two years later law-and-order candidate Richard Nixon won the presidency, while blaming the Supreme Court for an upsurge in crime and promising to nomi-

CHICK HARRITY

YOU DON'T HAVE TO JOIN THE NAVY TO BUILD A SUBMARINE.

nate justices who would reverse its liberal trend.

Although *Miranda* has held firm for 25 years and has even gained the quiet respect and praise of many police officers and prosecutors, its future is a matter of some conjecture in the freshly conservative Rehnquist era, as the Court gives *Miranda* new readings. Some say the reinterpretations are an attack on civil liberties; others see only a fine-tuning of a virtuous idea that can be cumbersome in practice.

Even some of the Court's most conservative justices defend *Miranda*'s procedures. The decision's groundbreaking predecessors—*Mapp v. Ohio* (which, in 1961, extended to state cases the federal ban against using evidence obtained illegally) and *Gideon v. Wainwright* (which, in 1963, provided indigent defendants with free legal counsel in state felony cases)—are also now firmly a part of the law. Nevertheless, the Rehnquist Court has decidedly chipped away at the rights of the accused

granted by the Warren Court, and liberals fear that it is poised, with chisel, to do more.

In 1984 the justices provided a "good faith" exception to *Mapp*, saying that evidence seized

under a technically faulty search warrant could be used at trial if the police involved honestly believed they were working with a valid document. The Court ruled in 1991 that a videotape of a suspected drunk driver that may contain incriminating evidence such as slurred speech could be introduced even though no *Miranda* warning had been given. Again expanding its definition of legal search and seizure, the justices ruled that evidence discarded by a fleeing suspect could be admitted in court and that police could board

a bus to randomly search passengers' baggage, with their permission, even if they did not have a warrant or reasonable cause (see "A Long Journey," page 76).

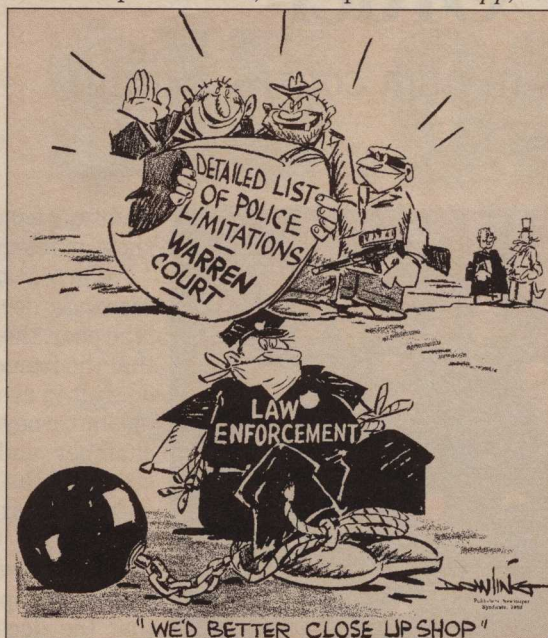
Although anything that makes it easier to

prosecute a crime is welcomed by law enforcement officers, many of the very same officials have come to appreciate *Miranda* in ways that they never could have predicted a quarter of a century ago. Recent highly publicized examples of police brutality notwithstanding, officers and prosecutors say that the ruling has created a much more sophisticated police force.

In the years before *Miranda*, policemen were often uneducated and untrained, increasing the chances that their conduct would lead to rights abuses. "Let's face it," says Nevada City, Calif., Police Chief Mel McDougal, "law enforcement officers were undertakers, bartenders or meat cutters. The local judge appointed anyone to the job, gave him a badge and a gun, and told him to take care of our city ordinances and state laws. But now that doesn't happen."

Minnesota narcotics agent Tim O'Malley agrees. "The days when you would pick the biggest guy on the block and give him a badge and tell him to keep people in line are gone. Police are more sophisticated today. Police work has gone from being blue collar to a mixture of blue and white collar."

As police were faced with having to prove guilt through means other than confessions, better-educated officers became imperative. "When *Miranda* came down," says Nevada County, Calif., Sheriff William Heafey, "all of law enforcement thought the bad guys had won again. But after some reluctance and suspicion,



Cartoonists ridiculed Warren Court rulings.

THE NEW SUB SANDWICH

Four new flavor combinations specially created for making



we just began to work harder. We became more professional. Instead of relying on outwitting somebody in an interrogation, we went and got good evidence."

Better training helped too. By the early 1970s, most states required rigorous schooling in proper law enforcement procedures at their academies. As a result, "the quality of detective work really improved," says Heafey. "We had to gather more physical evidence so we relied more on the work of laboratories and forensic evidence—blood splatters, DNA matching, fiber analysis. The Court decisions really accelerated the technological advancements in our field."

Some of the old resentment has remained, but many officers conclude that if *Miranda* lost a conviction, it was only because of sloppy police work. "If you read the *Miranda* ruling," says Heafey, "you see that it was prompted by such poor behavior on the part of law enforcement officers, it's incredible."

"*Miranda* made things more difficult," agrees St. Louis Circuit Attorney George Peach, who has never worked without it, "but they should have been made more difficult. The police were going too far to extract information from suspects in the old days."

Atlanta Lieutenant Louis Arcangeli has similar thoughts. "America isn't Russia. We're a free country. While we wouldn't have crime if we were under martial law, I think that it is a trade-off. We are free. And when an officer violates the

law, we are entitled to the same procedures, so I'm glad that our rights are protected."

The price of liberty, however, doesn't go unnoticed. Society suffers because of police mistakes, says Sheriff Heafey: "I lost a murder case once in Alameda County because the police department interrogated a kid for forty-eight hours without Mirandizing him. The confession was thrown out, and a murderer went free."

Of the three rulings, *Gideon* gets the most praise. "Until *Gideon*," says Arizona Attorney General Grant Woods, "the indigent defendant was at a great disadvantage and in many cases unable to defend himself adequately." *Mapp* and *Miranda*, on the other hand, are the territory for battle between civil libertarians and frustrated police.

Despite *Miranda*'s protections, officers are allowed to work in a manner some believe to be a violation of *Miranda*'s intent. The ruling, for instance, doesn't apply until the suspect has been taken into custody, so anything said to a policeman during informal questioning—before the defendant has been arrested—can be used against him and often is.

But police insist that criminal rights rulings need qualifications if they are to be used to support the ideal of law enforcement as well as individual rights. Convictions barred by so-called technicalities are a particular sore point. "Say the address on the search warrant says 4815 instead of 4817," argues Maricopa County, Ariz.,

attorney Richard Romley, "and the police, knowing which is right, go to the right house. If everything else was proper and in good faith, why throw it all out?"

Los Angeles prosecutor Harvey Giss agrees in principle with the carving and shaping of the Rehnquist Court. "The new rulings are returning the balance," he says. "Things had gone too far." Yet the decision allowing the search of baggage on a bus is excessive, he says, even though the Court ruled that passenger permission had to be granted first. "I don't buy that the average citizen will be able to resist a big policeman with a gun and say, 'No, you can't do what you want to do.'" The war on drugs, he says, has regrettably provided a greater willingness to curb rights. "But even this Court won't go too far."

Perhaps not. One of the justices' most important decisions on criminal rights in the past few years—a 1990 ruling in which they declared, 6-2, that a suspect in custody who asks to consult a lawyer may not be questioned again once his lawyer is no longer present—won a ringing endorsement from all sides. Under the headline "Mainstreaming *Miranda*," *The New York Times* acknowledged what Justice Byron H. White (a fierce *Miranda* dissenter who now has joined its supporters) could never have imagined: *Miranda* had been resoundingly endorsed by a majority of conservative justices who would not have voted for it in the first place.

—Todd Brewster

VARIETY-PAK[®] FROM OSCAR MAYER[®]

your favorite subs at home. Choose All American, Italiano, Beef or Ham and Turkey.



BUILD A SUB TONIGHT

The Case for Hate

*The Supreme Court
will soon decide
whether a cross burning is
protected speech*

A PATCH OF dirt, seared into the well-kept lawn of Russ and Laura Jones, is a dusty reminder of hate. In the early morning of June 21, 1990, long after they had put their five children to bed, the Joneses were awakened by voices outside their house. Russ went to his bedroom window and peered into the dark. "I saw a glow," he recalled. There, in the middle of his yard, two feet high and two feet wide, was a burning cross.

The Joneses are black. But until they moved into their four-bedroom, three-bath dream house in Dayton's Bluff, a middle-class neighborhood in St. Paul, Minn., most of what they knew about racism had come from books and television. Then, in the spring of 1990, two weeks after they had settled in the predominantly white area of town, the tires on both their cars were slashed. Several weeks later one of their cars' windows was shattered. And in broad daylight a group of teenagers walked past the Joneses' house and shouted at their nine-year-old son: "Nigger!"

The burning cross, however, sent a much stronger message to the Joneses—and to just about everyone else pulled into the act. It would become a symbol in the increasingly contentious debate over political correctness that goes to the heart of the First Amendment. Foes of "p.c." contend that it effectively inhibits free speech, while its champions can point to a new sensibility in the land. In the 1980s alone, laws against "hate crimes" and "bias-motivated acts" were passed within 36 states, and currently all but four have them on the books. Whether born of necessity or of rage, the tolerance of intolerance was wearing thin.

"It was such a weird feeling to actually see this thing burning in the yard," Laura Jones said. "You always hear stories about how, down through history, cross burnings are done as threats. . . . To us, it was like saying, 'We don't want you here, get out.'"

A production coordinator at Control Data Corp., Russ said he began thinking "very scary things," adding, "They burn a cross and you wonder what's next."

TEXT: PETER MEYER
REPORTING: JACK HAYES
PHOTOGRAPHY: LYNN JOHNSON



Police and prosecutors say R.A.V. (top) stole into the yard of Russ and Laura Jones (bottom) and planted a homemade cross (opposite). He then lit it—and ignited a constitutional controversy.



NOW THERE'S A NEW PLACE TO STICK YOUR POST-IT NOTES.



Our new, refillable C-300 pop up dispenser keeps a pad of our special fan-folded Post-it™ brand notes wherever you need them. Its unique adhesive backing sticks to most surfaces, so Post-it notes can always be right at your fingertips.

Ask for the new C-300 wherever you buy office, school, or art supplies.



36USC380 3M Commercial Office Supply Division. "Post-it" is a trademark of 3M. © 1991, 3M.

Innovation working for you™



Worldwide Sponsor 1992 Olympic Games

But what happened next was not what the Joneses expected. Many of their white neighbors gathered at their house to express disgust at the cross burning and offer support; they also signed a petition to start a crime watch group. The police investigation moved swiftly, and two local teenagers, both white, were arrested. Meanwhile, city officials were urging the Joneses not to move. "It's such a sign of hate," St. Paul Mayor Jim Scheibel said about the cross burning. "Physical violence may be worse in some ways, but the message with this is clearly hate."

Well before the incident at the Joneses', St. Paul had had enough of hate. In 1982 the city council had passed Ordinance 292.02, which the two teenagers were accused of violating. It states: "Whoever places on public or private property a symbol, object, appellation, characterization or graffiti, including but not limited to a burning cross or Nazi swastika, which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed or religion or gender commits disorderly conduct and

According to police and prosecutors, 17-year-old R.A.V. and some of his buddies spent the night of June 20 smoking marijuana, drinking and talking about causing "skinhead trouble" and "burning some niggers." Sometime after midnight the youths collected old chair legs, wrapped them in terry cloth rags and used tape to make a cross. Then they carried it to the Joneses' yard, where R.A.V. and his friends planted the cross, soaked it with shellac thinner and struck a match to it.

The teenager arrested along with R.A.V. immediately pleaded guilty to a bias-crime misdemeanor and was sentenced to 30 days in jail. R.A.V. was more fortunate: He trusted his fate to Cleary.

After the charges against R.A.V. were dismissed, his case passed quickly to the Minnesota Supreme Court, which, in a biting opinion handed down last January 18, upheld the St. Paul ordinance. "Burning a cross in the yard of an African American family's home is deplorable conduct that the City of St. Paul may without question prohibit," wrote Minnesota Supreme Court Justice Esther Tomljanovic.

Yes, I'd give the Devil benefit of law

shall be guilty of a misdemeanor." Enter Edward J. Cleary.

A St. Paul lawyer on contract with Ramsey County to defend indigent clients, Cleary was assigned the case of R.A.V. (as his name appears in court records), juvenile, high school dropout and accused cross burner.

A self-described "liberal Irish Catholic Democrat," Cleary had worked for years helping African Americans and detested the cross-burning incident—but he decided he had a constitutional claim on his hands. Like many of the so-called hate crime laws, the St. Paul ordinance, Cleary believed, was a threat to the First Amendment. Three weeks after getting the case, he convinced a county court judge to declare Ordinance 292.02 a violation of R.A.V.'s right to free speech.

"A black probation officer came up to me after the judge's decision to throw out the charges and started screaming at me," Cleary said. "It hurts. But I was just doing the job any trained attorney would do. My client was being charged based on the content of his beliefs, a violation of the Constitution."

"The burning cross is itself an unmistakable symbol of violence and hatred based on virulent notions of racial supremacy. It is the responsibility, even the obligation, of diverse communities to confront such notions in whatever form they appear."

The decision dealt a serious blow to Cleary—one that was compounded two weeks later by the sudden death of his father. A longtime Ramsey County prosecutor, Edward E. Cleary was one of the few people who had encouraged his son to take the case to the U.S. Supreme Court. While trying to cope with his loss, Cleary wasn't sure if he could go on with the case. After several weeks, though, driven by his own intense beliefs and the memory of his father's support, he decided to press forward.

On April 10 of this year, with little help and no money, Cleary petitioned the Court for review. "Clearly there has been a nationwide movement toward stifling expressive conduct that the majority finds offensive or demeaning," he argued in his petition, making pointed reference to the controver-

sy over politically correct speech. It is an issue, he added, "which this Court should decide."

Two months later Cleary got the news that *R.A.V. v. St. Paul, Minnesota* would be one of only some 150 to 175 cases the Court will hear during the 1991-92 term.

"So now you'd give the Devil benefit of law!" Cleary began his brief to the Court, quoting William Roper in *A Man for All Seasons*.

"What would you do?" Thomas More responded. "Cut a great road through the law to get after the Devil?"

"I'd cut down every law in England to do that!"

"Oh?" More said. "And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? . . . [I]f you cut them down . . . d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake."

As he had from the outset, Cleary maintained that he didn't ask for this First Amendment battle. "They could have charged

[R.A.V.] with a whole host of other offenses," he said. "Trespassing, criminal damage to property, vandalism—none of which infringed on his First Amendment right of free expression—but they didn't."

Explained St. Paul Deputy City Attorney Virginia Palmer, "When someone burns a cross in somebody's yard and you have an ordinance which makes that against the law, it's pretty hard not to charge them with that."

"I'm 100 percent in favor of nailing [cross burners'] hides to the wall," says Mark Anfinson, a volunteer lawyer for the Minnesota Civil Liberties Union who helped Cleary and his partner, Michael Cromett, prepare their Supreme Court brief. "Just don't wipe your feet on the First Amendment as you go out the door."

According to the American Civil Liberties Union and the American Jewish Congress (which joined to file an amicus curiae brief on R.A.V.'s behalf), the Court's task is formidable: to "promote the values of both free speech and equality without sacrificing either."

History seems to be on the side

of free speech: In 1969 the Court allowed a cross burning at a Ku Klux Klan meeting, and in 1989 it threw out a Texas law forbidding the burning of an American flag. But the Court has made enough exceptions—permitting, for example, laws against libel and “fighting words”—to give champions of the First Amendment pause.

“Cross burning is the expressive equivalent of a brutish grunt,” Ramsey County Attorney Tom Foley argued in his brief to the Court. This case wasn’t about a flag burned at a public protest, he said, or even a cross burned at a Klan rally, but about “a cross burned on a black family’s lawn in the middle of the night. And that is a direct threat and can be prosecuted.”

“The idea that government may regulate expression on the basis that it offends certain groups is repugnant to the First Amendment,” Cleary argued. “The ordinance could . . . be applied against a pro-choice advocate for the display of a clothes hanger, as well as against a pro-life advocate for the display of a picture of a fetus.”

Neither Cleary nor Foley has ever argued a case before the Supreme Court. But they are des-

tinued to square off sometime in the weeks ahead—and each will get 30 minutes to deliver his argument.

The Joneses are well aware of the implications of the case. They can even appreciate the right of the Klan to march in the street outside their house. But a burning cross in their yard? “The kid did something wrong,” Russ says. “Why doesn’t he take the punishment?”

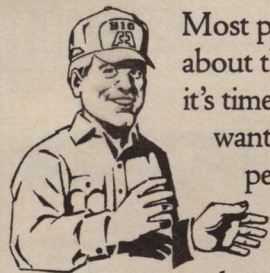
R.A.V., now 18, sports close-cropped blond hair, calls himself a white separatist and wears Proud to Be an American T-shirts. Though he refuses to discuss the cross-burning incident, he does say, “Lighting a cross has been passed down. If it’s lit in somebody’s yard, they’re doing something you don’t like or that you want stopped. Like them living in the neighborhood.”

R.A.V. has a steady factory job now, carries a copy of his Supreme Court brief and readily understands the nuances of his case, which he follows avidly in the newspapers. “I’ve been reading the opinion pages especially,” he says. “That’s where they tell people what a jerk I am. But everybody’s got a right to their opinion.” ☆

Acknowledgments We would like especially to thank Bernard Schwartz, professor of law, New York University School of Law, and Henry F. Graff, professor emeritus of history, Columbia University, for the counsel they offered us as we prepared this special issue on the Bill of Rights. Others for whose time and advice we are also grateful include Randy E. Barnett, professor of law, Chicago-Kent College of Law; Lawrence M. Baskir, editor in chief, *Military Law Reporter*; Vincent Blasi, professor of law, Columbia University School of Law; Ira Glasser, executive director, American Civil Liberties Union; Peter Irons, professor of political science, University of California at San Diego; Bernard James, professor of law, Pepperdine University School of Law; John P. Kaminski and Gaspare J. Saladino, co-editors, *Documentary History of the Ratification of the Constitution and the Bill of Rights*, University of Wisconsin at Madison; Yale Kamisar, professor of law, University of Michigan; Dr. Mary-Jo Kline; Leonard W. Levy, professor emeritus of history, Claremont Graduate School; Paul Murphy, professor of history, University of Minnesota; Burt Neuborne, professor of law, New York University School of Law; Whitney North Seymour Jr.; Franklin Siegel, staff attorney, Center for Constitutional Rights; Rodney A. Smolla, director, Institute of Bill of Rights Law, College of William and Mary; Samuel E. Walker, professor of criminal justice, University of Nebraska at Omaha; Judge Leslie Crocker Snyder, New York State Supreme Court.

Picture Sources are listed by page. Cover: photographs left to right: Girl Mill Worker—International Museum of Photography at George Eastman House; James Madison—The Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma; Federal Hall, New York City—Henry Groskinsky; antiwar demonstrator—Dan Lamont/Matrix. 32: left to right—Brown Brothers; Wide World. 37: inset—Lincoln Cathedral/The Bridgeman Art Library. 38-39: left photograph—Virginia Museum of Fine Arts, Richmond, gift of David K. E. Bruce; inset—copied by Michael Latil, courtesy National Archives. 40: top to bottom, left to right—Independence National Historical Park Collection; deposited by the City of Boston, courtesy Museum of Fine Arts, Boston; deposited by the City of Boston, 1876, courtesy Museum of Fine Arts, Boston; collection of the Maryland Historical Society, Baltimore; courtesy Independence Hall Collection; Harvard Law Art Collection; Mead Art Museum, Amherst College, Accession #1945.115. Lawrence Sully portrait of Patrick Henry, 1795 watercolor on ivory, bequest of Herbert L. Pratt, class of 1895; Munson-Williams-Proctor Institute, Museum of Art, Utica, N.Y.; courtesy Mr. & Mrs. William G. Long. 41: copied by Jim McHugh/LaMoine, courtesy Library of Congress. 42-43: left photograph—The Thomas Gilcrease Institute of American History and Art, Tulsa, Oklahoma; bottom photograph—copied by Edward Owen, courtesy Library of Congress. 44: copied by Michael Latil, courtesy National Archives. 46: Commonwealth of Virginia, Virginia State Library & Archives, courtesy Philip Morris Corp. 48: Supreme Court Historical Society. 60-61: inset—courtesy Mr. Howard W. Moore; right photographs, top to bottom—International News Photo; collection of the Supreme Court of the United States; courtesy Paul Avrich; Associated Press; United Press-Acme Newspictures Inc.; Harris & Ewing. 62-63: bottom photographs, left to right—(Minneapolis) Saturday Press & Minnesota Historical Society; © Karsh/Woodfin Camp & Associates; courtesy Mr. Russell D. Cantwell; courtesy Mrs. Lillian E. Klose; courtesy Mrs. Gathie Edmonds; James Whitmore; Maurice Mitchell/Los Angeles Examiner via Bettmann; N.Y. Star. 64-65: bottom photographs, left to right—© Karsh/Woodfin Camp & Associates; Thomas McAvoy; Associated Press; Tommy Giles; The Des Moines Register; Associated Press; The Janesville Gazette; UPI-Bettmann. 66: bottom photographs, left to right—Joseph W. Jackson/Wisconsin State Journal; David Leeson/JB Pictures; Ken Heinen; Bill Cooke/Associated Press. 68-74: Contact Press Images. 76-83: Sygma. 86: reprinted with special permission of North America Syndicate. 88-89: Black Star. 93: middle photographs, left to right—courtesy NYS Department of Environmental Conservation; Photobank, Inc. LIFE is printed by World Color Press-Stillwater Division.

GIVE YOURSELF A BREAK WITH PROPER BRAKE MAINTENANCE.



Most people only think about their car's brakes when it's time to stop. But if you want to be sure they'll perform when you need them you should give your brakes some thought well ahead of time.

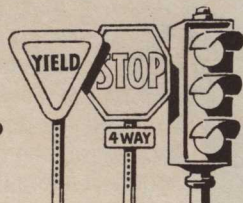
Brake maintenance begins with periodic checks: Every 18 months or so under “normal conditions” or annually if you do a lot of stop-and-go driving in traffic or if you tow a trailer.

It's easy to check them when you're getting an oil change, tires rotated or similar work done, but don't wait for a convenient time. If you suspect some kind of brake problem, have it looked at immediately.



Specifics you should be careful of include:

- Squealing, grinding noises, or unreliable stopping. These can be signs of worn pads or shoe linings. If the pads or linings are worn too badly, they can score drums or rotors.
- Brake noise or squeal. This may be a signal of dragging brake shoes or pads, which can result in poor gas mileage, premature wear of linings and damage to drum or rotor friction surfaces.
- Brake chatter and pedal pulsation can indicate a warped rotor or uneven drum surface.
- Excessive pedal travel or “bottoming out” of the brake pedal, may mean the brake fluid level is low or there is air in the hydraulic system.



- Grabbing brakes is often a sign of a leaking caliper or wheel cylinder.
- A soft pedal, or excessive pedal effort, can be an indication of several problems, including master cylinder or power brake malfunction.

Finally, when having brake work done, buy the best. A cheap brake job might be just that, cheap. It may not include inspecting and replacing all things that are necessary for a complete, safe job. And compromising quality in safety maintenance is foolish. It could cost you big down the road.

A qualified service technician with the proper training and equipment, like your local Big A PRO, can give you a thorough inspection and give you the peace of mind to know that your brakes will be serviced right. And that when you call on your brakes to stop, they'll do just that.



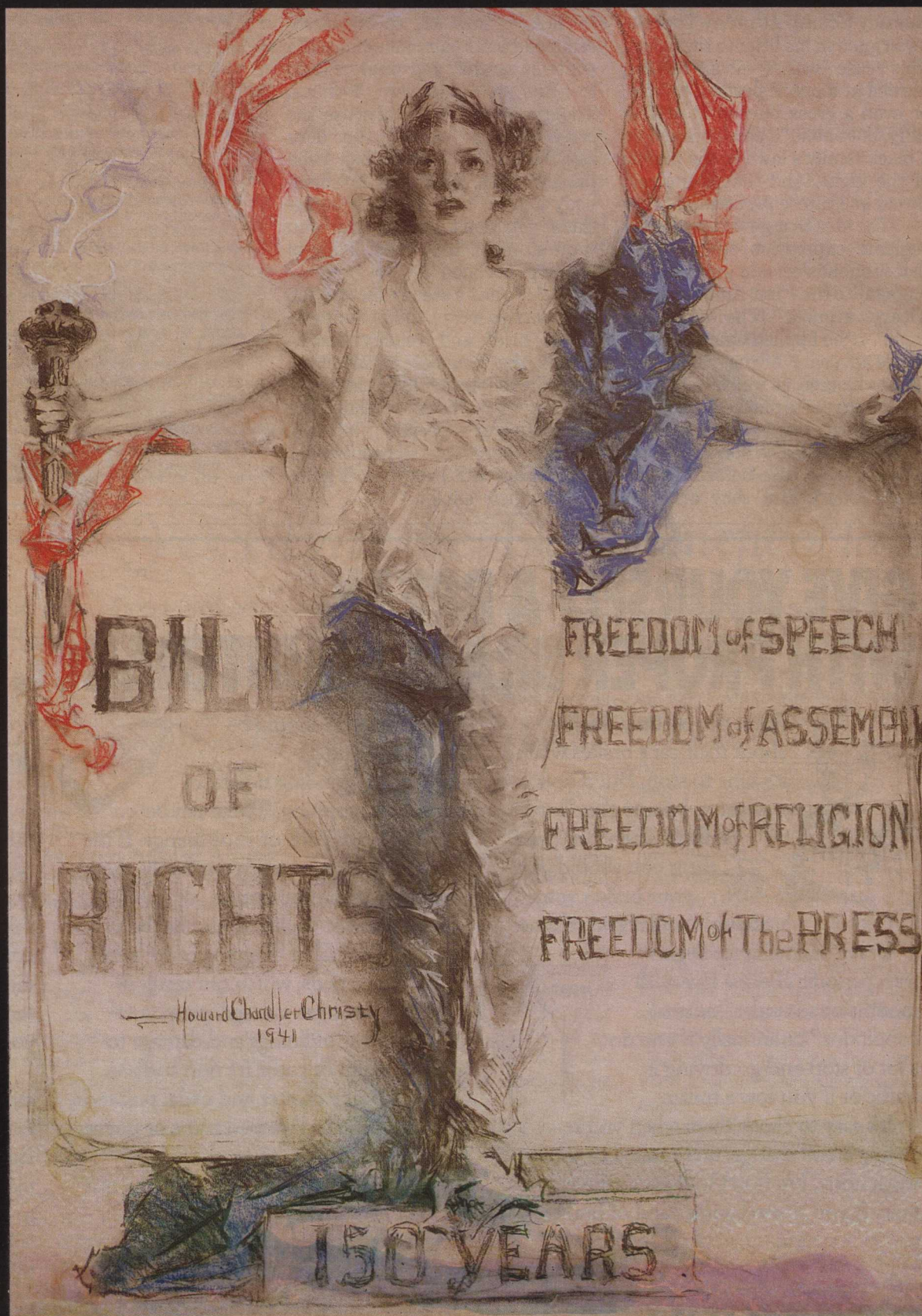
The Rights Stuff

*Fascinating
footnotes
to the
Great Bill*

Late Bloomers

"I, President Franklin D. Roosevelt, President of the United States of America, do hereby designate December 15, 1941, as Bill of Rights Day." Though the proclamation came a bit late—150 years after Virginia's ratification made the Bill legal—it was timely for two reasons: Patriotic fervor was at an all-time high a week after Pearl Harbor, and only in recent years had anyone taken the first 10 amendments to the Constitution seriously and begun using them in court. There were parades, rallies, you-are-there radio shows and tableaux. In New York, Helen Hayes stood up at City Hall and read the entire Bill of Rights. But the fanfare wasn't as interesting as what had happened two years earlier, during the sesquicentennial of the Constitution, when three of the original 13 colonies—Georgia, Connecticut and Massachusetts—finally got around to ratifying the Bill.

A quintessential Lady Liberty serves as the Bill of Rights' sesquicentennial pinup in this 1941 poster.



LIBRARY OF CONGRESS



Congress might have to face voters before collecting self-issued raises if an early amendment is ratified.

members. In 1991 that could have meant 5,000 representatives, instead of the present 435 established by statute in 1929. The second amendment prohibited congressional pay raises from taking effect "until an election of Representatives shall have intervened," the idea being to force lawmakers to justify the raises to voters. So far, 35 states—three short of the required three-fourths majority—have approved.

... Three copies of the Bill of Rights? In 1789 scribes in New York made 14 handwritten copies—the original went to the new federal government and one went to each of the states. Today seven are known to be in the possession of states, one in the Library of Congress, two in the National Archives and one in the New York Public Library. New York, Georgia, Maryland and Pennsylvania have no idea where their copies are, and North Carolina insists its copy was swiped by a Union soldier. New Hampshire didn't know its copy was missing, but in 1969 someone spotted it rolled up atop a metal storage cabinet in a state building.

Whatever Happened To ...

... The first two amendments to the Constitution? The original Bill of Rights began with two amendments that were never ratified (though one still shows signs of life). Neither had anything to do with rights. The first set forth a formula for apportioning seats in the House of Representatives, calling for a ratio of not more than one representative for every 50,000 citizens once the House reached 200



At a Navy court-martial, a judge reads the charge to the accused, whose rights are limited.

Minors. Children do not have all the rights of adults. They must be read their rights before being taken into custody, and they have the right to a lawyer, the right to a speedy detention hearing and the Fifth Amendment right not to incriminate themselves, but they do not always have the right to trial by jury. Children are protected by the Fourth Amendment from unreasonable search by police but do not necessarily have that protection in school.

Native Americans. The 1968 Indian Civil Rights Act extends rights similar to those in the Bill of Rights and the 14th Amendment to Native Americans. Nevertheless, tribal authority usually takes precedence over state and federal laws: Individual rights, such as legal representation and a jury trial in civil cases, are not necessarily guaranteed.

Exceptions

Large segments of the population are restricted from guarantees provided by the Bill of Rights, including:

Soldiers. Those in the armed services go by a different set of rules: the Uniform Code of Military Justice. Although rights under the code depend on interpretation by military courts, soldiers do not have the right of free speech while in uniform. A soldier accused of a crime is usually tried by court-martial and is guaranteed an appeal to a higher military court. He is judged by a jury of peers, but an officer selects the panel from which they are chosen, and verdicts need not always be unanimous.

BOTTLE BILL OF RIGHTS

If you buy beer, soda or mineral water in New York State, you pay a deposit on each can or bottle. That gives you certain rights ...

THE RIGHT to return your empties for refund to any dealer who sells the same brand, type and size ... whether you bought the beverage from that dealer or not.

THE RIGHT to get your deposit refund in cash, without proof of purchase.

THE RIGHT to return your empties any day, any hour, except the first and last half-hours of the dealer's business day.

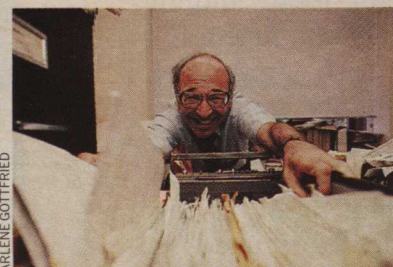
THE RIGHT to return your containers if they are empty and intact. Washing containers is not required by law, but it is strongly recommended to maintain sanitary conditions.

These regulations of the New York State Returnable Container Act are enforced by the New York State Department of Environmental Conservation. Report any violation to the NYS Department of Environmental Conservation, Two World Trade Center, New York, NY 10047.

THE CITY OF NEW YORK, EDWARD I. KOCH, MAYOR
Department of Sanitation, Norman Siegel, Commissioner
Department of Consumer Affairs, Angelo J. Aponte, Commissioner

This notice is required by the printed pursuant to Local Law 25 of the Laws of 1985, enacted by the NYC Council.

Despite this bill's name, bottles don't have rights.



Herman Schwartz helps foreign governments, such as Mongolia's, draft their own bills of rights.

are guaranteed free medical care, material security in old age, free education, a "favorable living environment" and a fair salary. Such lists may be enticing, but affirmative rights are harder to enforce than negative ones, says American University law professor Herman Schwartz. "It's easy to put together a nice catalogue of rights," he says, "but the real problem is how to give the people in the country the means to enforce those rights."

Copycats

The Bill of Rights has spawned hundreds of imitators, from a dog's bill of rights (includes his right to belong to a person) to a video customer's bill of rights (cable companies must restore service outages in less than 24 hours). Even Lee Iacocca found a way to connect his car company with freedom by calling for a customer's bill of rights (it does not offer his home phone number). Others include a sports fan's bill of rights (give 'em a say in contract negotiations), a car renter's bill of rights (no freedoms, but the first 100 miles are free), a credit bill of rights (credit bureaus oppose it) and, perhaps most humorous of all, Ronald Reagan's 1988 taxpayers' bill of rights (allegedly protects taxpayers from IRS agents).

Going Global

We are not alone. Of the 175 countries in the world, almost all have their own version of a bill of rights. In most cases, the freedoms are not only protections but downright entitlements. These days virtually every country in Eastern Europe is in the process of revising its manifesto of what the government owes citizens, often with an assist from American constitutional scholars. Czechoslovakia's citizens



California's declaration of rights guarantees that "the people shall have the right to fish."

tution protected Americans only from improper actions taken by the federal government. Many people today are looking to states to expand rights the federal government has been reluctant to offer, such as victims' rights and rights of privacy. Nevertheless, many states also have retained anachronistic reminders of the past. For example, many will not allow titles of nobility and many restrict the quartering of troops in homes. There's also a general reluctance to do away with archaic language, phrases like "Christian forbearance" and a "man hath a right."

"Newer states like Alaska and Hawaii use clinical terms, which may seem dry and dessicated," says A. E. Dick Howard, a University of Virginia law professor who headed the committee that drafted Virginia's most recent constitutional revision. "The older states include language that some people argue was surplus but which I think of as the language of aspiration."

The inventiveness of rights or abridgments offered by diverse states is astounding. Missouri exempts women from jury duty. Pennsylvania promises a right to clean air and water. Nebraska refuses bail to suspected rapists. Arkansas and Georgia prohibit banishment. New Hampshire guarantees a "right of revolution." Iowa forbids dueling. Colorado and Nebraska proclaim their official language to be English. Georgia outlaws whipping. Tennessee ensures its citizens the free navigation of the Mississippi River. Oklahoma interdicts drunkenness while in office. And Wyoming declares that "all members of the human race are equal."

☆



P R E S E N T S

LIFE ON EARTH

SANDHILL CRANE



One of the largest birds in North America, sandhill cranes stand three feet tall and have a seven foot wingspan. They produce a shrill, incessant trumpeting call when alarmed, audible at a great distance. During spring, sandhill cranes perform elaborate courtship dances to reinforce their monogamous bonds, leaping eight feet in the air with extended wings.

Sandhill cranes were nearly wiped out at the turn of the century due to hunting, agricultural development and wetland drainage. Six subspecies of sandhill crane currently inhabit North America. Only about 60 Mississippi sandhill cranes, federally listed as endangered, survive in swamps near Mississippi's Gulf Coast. Each March, 500,000 migrating lesser sandhill

cranes, a separate subspecies, converge along 80 miles of the Platte River in Nebraska to rest and refuel before continuing their northern migration. With 10,000 to 20,000 birds per mile, it is the largest

**Sandhill cranes were
nearly wiped out
at the turn of
the century.**

gathering of cranes in the world, roughly 80% of the total sandhill crane population in North America.

Because they need large open areas to nest, sandhill cranes are especially sensitive to human disturbance and habitat loss. From Canada to Mexico, many of the rivers and saline lakes used as roosting sites have been lost to drainage and development. The

Whooping Crane Trust and the National Audubon Society clear the vegetation-clogged channels of the Platte River each year to help maintain water flow so the cranes can roost successfully.

Amway has produced a limited edition "Life on Earth" calendar. With the sale of this calendar, Amway and the National Wildlife Federation will support endangered species education among U.S. schoolchildren. Ask your Amway distributor for details.

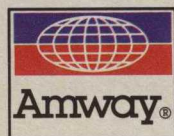
FIND THE ENVIRONMENTAL ACTIVIST



Clockwise from left, Eugene Johnson, Texas; Dr. Richard Allen, Oregon; Yvonne Moore, Maryland; Ruth Lohela, California; David Margolis, Nevada; Linda Hardy, New Jersey.

Everyone in this photo is an environmental activist. They all became involved in the environment the day they started their Amway businesses.

Since introducing its first product in 1959—L.O.C.® Liquid Organic Cleaner, a product containing only biodegradable detergents—

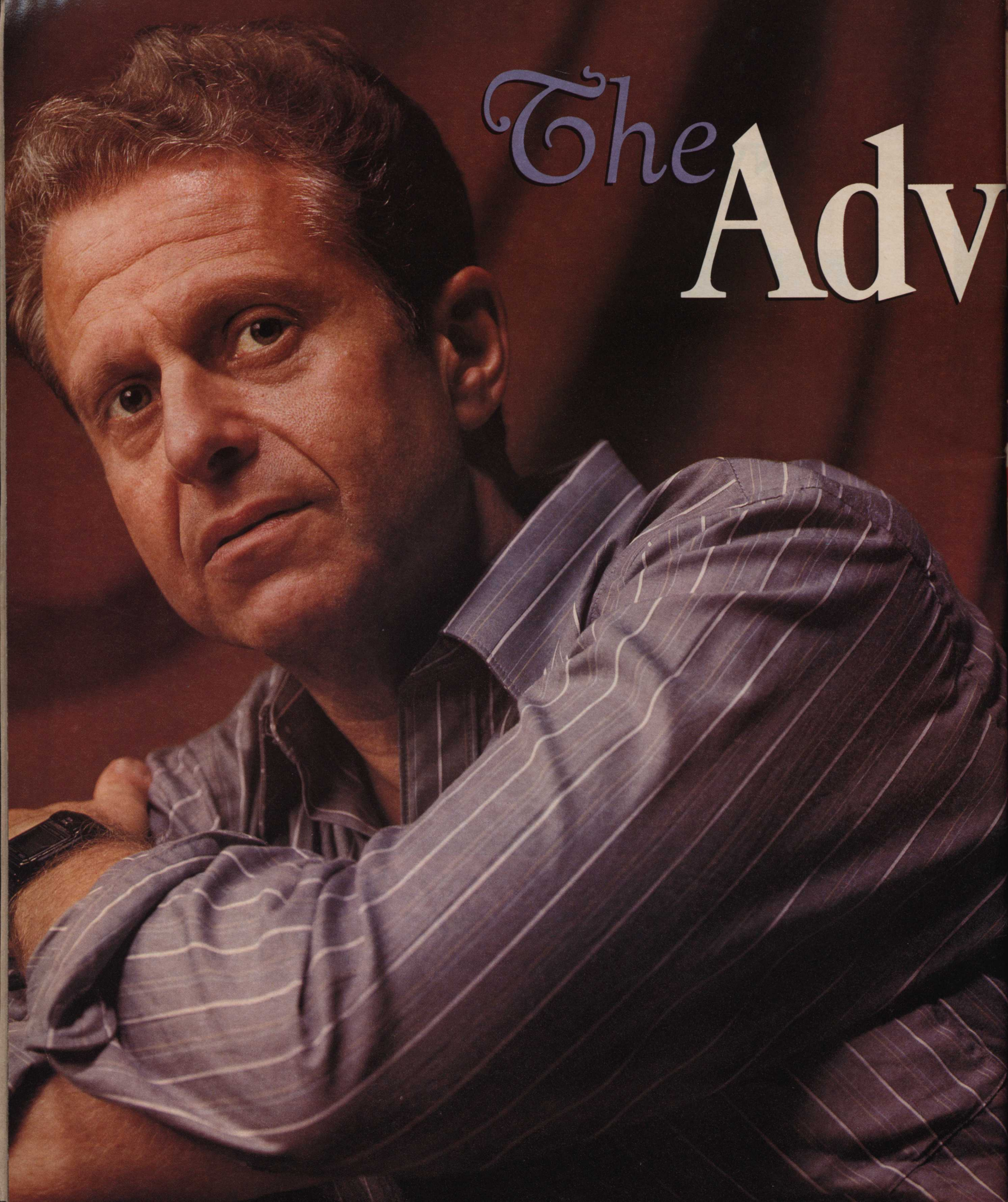


Amway has had a concern for the environment.

As Amway distributors, the people in this photo also share with Amway the honor of receiving the United Nations Environment Programme Achievement Award for commitment to the cause of environmental awareness.

And you thought you knew us.

Amway and its one million independent distributors market hundreds of diverse products and services to more than 50 countries and territories. For more information, call 1-800-544-7167.



The Adv

Advocates

Point and counterpoint,
Laurence Tribe and
Robert Bork debate the
framers' spacious terms

BOTH MEN ADMIRE JAMES MADISON. Both hold the document he authored in utter reverence. But there's not much else that Robert Bork (*right*) and Laurence Tribe (*left*) agree about. Bork, 64, is the bearish guru of the philosophy of judicial restraint. Conservatives praise his eloquent defense of the majority's right to govern; liberals malign him as a cold extremist. Tribe, 49, in the opposite corner, is Bork's nemesis, the man who helped convince Congress to reject Bork's 1987 nomination to the Supreme Court. Himself a contender for the next Democratic appointment to the high bench, Tribe's outspoken support of decisions expanding individual freedoms delights liberals. Conservatives call his interpretations a "constitutional cancer."

The two lawyers are today's most prominent opponents in the 200-year-old argument over how to fairly and accurately apply the 462 words that make up the Bill of Rights. Bork, a former federal appeals court judge and now a legal scholar at a Washington think tank, makes a case for what he calls "original understanding" in his 1990 best-seller, *The Tempting of America*. He maintains that past Supreme Court rulings mandating social policy went against the framers' intentions. Tribe, an erudite Harvard Law School professor and coauthor of this year's book *On Reading the Constitution*, sees an ominous shift toward dilution of individual rights under Chief Justice William Rehnquist. He believes that recent Court rulings violate the Constitution's spirit, if not its letter.

LIFE reporter Miriam Bensimhon sat down with Bork and Tribe—separately—to listen to this classic debate in modern syntax. What she heard confirms one thing: The great phrases of the Bill of Rights are generous enough to allow each man a vigorous argument.



Q. You have been called the primary spokesman for “original understanding.” What does the term mean?

Bork: Well, I call it original understanding because that’s what we’re really talking about—not what the authors of the Bill of Rights had in the backs of their minds, but what people who voted for this thing understood themselves to be voting for. The same principle is applied to any legal document. When a judge applies a statute, he asks: “What did Congress understand itself to be doing with this statute?” Since the Constitution is a legal document, it should be approached in the same

way. The danger comes when the Court cuts loose from that standard method of interpretation and begins to act as the final legislature, allowing justices to write their own moral or political principles into the Constitution. Because then we’ve essentially lost our form of government.

Yet we live in a very different time from that of the framers of the Constitution. Don’t their words have to be reinterpreted for our own era?

Sure they do. But I think the principles of the Bill of Rights are, by and large, timeless principles for a free society. Our work is in understanding how these principles apply to new technologies, like wiretapping, or what was meant by an amendment that was clearly specific to the age in which it was written. For instance, the National Rifle Association is always arguing that the Second Amendment determines the right to bear arms. But I think it really is people’s right to bear arms in a militia. The NRA thinks that it protects their right to have Teflon-coated bullets. But that’s not the original understanding.

In general, would you say that the courts have respected original un-

derstanding and applied the Bill of Rights successfully?

No, I would not. The interpretation of the Bill of Rights has sometimes been more expansive than it should be. Take the issue of freedom of speech. To turn that into freedom of expression and then get into the question of whether nude dancing is protected by the First Amendment, I think is ridiculous.

What right granted by the Court best illustrates a departure from the original understanding?

The most egregious example is *Roe v. Wade*, which legalized abortion. There is simply nothing in the Constitution either way about abortion. There’s nothing about sexuality in the Constitution. At all.

And so you would suggest that pro- and antiabortion activists make their cases before Congress?

Yes. You see, a lot of Americans are confused about the Court. They think the Court is a sort of big daddy legislature that does good things regardless of what the Constitution says. As a result, the courts have become the place to go if you can’t get what you want from the legislature. Ronald Reagan said he wanted judges who would interpret the

Constitution. Most people agree with that. But most people also can’t believe there isn’t something in the Constitution protecting what they think ought to be done.

Yet pro-choice groups find an argument for a right to privacy in the Ninth Amendment’s reference to rights outside of those enumerated. Are they wrong?

If you say to the American Civil Liberties Union, “That’s not in the Constitution,” they’ll always say, “Aha, the Ninth Amendment says there are things not in the Constitution that judges should do.” But that’s reading the amendment incorrectly. The framers thought of the federal judiciary as an insignificant branch of government. There would have been enormous debate if they had had any idea that the Ninth Amendment would be used to make up rights, because that would defeat the democratic process. It goes back to the fact that the people who resisted a Bill of Rights were fearful that we would get the impression that only what was stated as a freedom was important. But it’s not a warrant for judges to make up rights. It’s an admonition to the body politic.

Bork v. Tribe on natural law, the Ninth Amendment, the



Q. Why do we need a Bill of Rights? Who is it supposed to protect?

Tribe: The single phrase that appears more often than any other in the Bill of Rights is “the people.” There is room for debate as to whether that means every individual human being or “people” as a collective entity, but I think it’s designed to protect both. It’s designed to protect individuals and minorities against the tyranny of the majority, but it’s also designed to protect the people against bureaucracy, against the government. One of my most fundamental disagreements with con-

servatives is that they start with the premise that the Constitution is designed, by and large, to let those who govern have their way with us unless there is something specific that says no. I think a more faithful reading of the Bill of Rights is as a document that exemplifies the virtues of limited government and that protects against the danger that those who govern will develop their own agendas—which are not necessarily the interests even of the majority, let alone of individuals and minorities.

Does it work?

I think it works reasonably well. But I think it would work even better if we were more vigilant and took it more seriously. It’s easy for people to assume that the Bill of Rights will be, as somebody once called the Constitution, a machine that runs itself. I disagree. I think eternal vigilance is the price of keeping it in working order.

Are you displeased with the Court’s current conservative drift?

The greatest danger of judges who tend to defer to the government, who say that the government is right unless the Constitution very

clearly says otherwise, is that in their hands the Bill of Rights becomes just so much paper, a beautiful set of platitudes.

Conservatives charge that your approach grants courts the power to create law, to find new “rights.” Shouldn’t the Court interpret—not rewrite—the Constitution?

I see the Ninth Amendment as perhaps the most basic principle in the whole Constitution. I would say it is a message from those who wrote the Constitution to those who read it about how to read it. And it says that the fact that the document lists certain rights must never be used as an excuse to say that there are no others. That’s why the failure of the Constitution to enumerate rights of personal intimacy or marital privacy or reproductive freedom seems to me not at all decisive. The Ninth Amendment makes it clear that the failure to mention those words is immaterial.

But does that mean that a judge assumes the power to broadly interpret the Constitution without regard to the framers’ intentions?

No, but I think a judge’s role is to identify the basic values that are

expressed in the document and to give those values life in the context of contemporary society. He or she should not pretend to be merely a pipeline for some distant voices of giants who walked the land in the 18th century, but instead take personal responsibility for explaining what it is about a particular exercise of governmental power that does or does not clash with basic constitutional principles.

“Natural law” has been defined as a set of unwritten but deeply held beliefs. Should judges take these into account?

There’s no doubt that the framers believed that there were natural rights and talked a lot about natural justice. But talking about nature as though it provides its own answers is a little dangerous. A lot of people have thought that it’s unnatural for women to work, that it’s natural for women to be pregnant, that it’s natural for the rich to exploit the poor. Judges, in the name of visions of that kind, have struck down laws designed to protect workers from being exploited or to protect children from being forced to work. We shouldn’t pretend that

Do conservatives as well as liberals use the Court as a last-chance legislature for their agenda?

Up until 1937, the Supreme Court was pursuing a conservative agenda, protecting property rights and free markets—often in ways that the Constitution did not allow. Then we dropped that completely, and now we're protecting lifestyles that the Constitution has nothing to say about either. The pendulum swings in both directions.

What do you think about the judicial debate on a "natural law" separate from the Constitution?

Natural law and fundamental rights not stated in the Constitution are not the business of judges. Judges are trained in law, and when they get into philosophizing, they're really quite poor at it.

Do you ever feel like the lone crier, preaching these ideas?

That has crossed my mind. But a lot of people are listening. All kinds of groups agree with me. They're just not politically active groups. Others accuse me of being coldhearted, too rational. They say I should show more emotion in these matters, but my emotion is about the legitimacy of government.

le of the Court...

we find natural laws in some eternal truth out there.

Liberals are often accused of wanting a result and working backward to find a legal basis to justify it. How do you answer this charge?

Well, first let me say that a result-oriented approach to the law is an evil not limited to one ideological camp. It is at least as often the case that those who side with the government seem to decide that the government is going to win and then try to figure out how. The tendency to approach a reading of the Bill of Rights with an agenda is wrong whether you come from the left or the right. And I think there have been justices on both sides of that divide. Chief Justice Rehnquist has a much too strong pro-government leaning, and I think Justice William O. Douglas had too strong an antigovernment leaning. But it's my deep belief that the overriding theme of the Bill of Rights is to protect the people from an insensitive government. Whether you call it being result-oriented or not, that protection is central to the whole structure and mission of the Constitution. ☆



If you're a Jack Daniel's drinker we'd like to hear from you. How about dropping us a line?

FROM THE LOOK OF THINGS in Jack Daniel's Hollow, there's a touch of autumn in the air.

Seeing two of our employees toss a football around reminds us that fall is rapidly approaching. And we hope the signs are equally evident wherever you happen to live. Somehow, we've always felt our Tennessee Whiskey tastes best in the cool air of autumn. A lot of our drinkers feel that way too. So we see no reason to delay your first toast to the season.

SMOOTH SIPPIN'
TENNESSEE WHISKEY



Tennessee Whiskey • 40-43% alcohol by volume (80-86 proof) • Distilled and Bottled by Jack Daniel Distillery, Lem Motlow, Proprietor, Route 1, Lynchburg (Pop 361), Tennessee 37352
Placed in the National Register of Historic Places by the United States Government.

In Nebraska homegrown

heroes fight for justice

and liberties for all *The*
Activists



Coach Bill Tuma inspired Gabe Gibbons, 18, to wrestle for freedom of religion.

"RIGHTS ARE NOT WON ON PAPER," proclaimed Roger Baldwin, founder of the American Civil Liberties Union. "They are won only by those who make their voices heard—by activists and militants." Many citizens' action groups, from conservative to ultraliberal, help people fight for their rights. But since its inception in 1920, the ACLU has been the watchdog organization most active in getting those voices a hearing—arguing more than 6,000 cases last year alone. Among the smallest of the ACLU's 51 affiliates is the 25-year-old Nebraska Civil Liberties Union. Only

1,000 of the 300,000 ACLU members nationwide come from the sparsely populated state on the Great Plains. Most of the nearly 2,000 Nebraskans who call or write the NCLU each year never even heard of the organization until their troubles began. And then they found their way to the office on the second floor of what used to be a peanut butter factory in downtown Lincoln. The NCLU is virtually a one-man operation. An ex-cop whose wife gave him a framed copy of the Bill of Rights for his 40th birthday last year, executive director Bill Schatz sees civil liberties issues everywhere, from the local record store's ban on minors buying Madonna videos to the Christmas play at his daughter's school. "I've spent most of my life hollering at the TV," he says. "Now I get paid for doing it."

An applicant submits a written complaint, which must be reviewed by a panel of lawyers and approved by the 18-member NCLU board of directors. Schatz then assigns the case to a cooperating attorney. The 20 or so cases he can afford to litigate each year involve rights abuses—a college professor who lost her job because of epilepsy, a woman who was roughed up by police after a robbery nearby and a Native American high school wrestler from South Dakota (*inset*) who was unable to compete in Nebraska because of his traditional long hair. On the following pages is a casebook of some other ordinary citizens who recently stood up for what they believed and, with help from the NCLU, are making their state motto, Equality Before the Law, the literal truth.

REPORTING: MIRIAM BENSIMHON
PHOTOGRAPHY: ALEN MACWEENEY



NCLU

NEBRASKA CIVIL LIBERTIES UNION

With a budget of just \$75,000 a year, the NCLU, which does not charge for its services, operates with volunteers and one full-time paid employee, Bill Schatz. Says Nebraska's top civil libertarian, "We're so small, fighting against so much."



The Class Rebel

ON A 1,400-ACRE corn farm in Chapman, Nebr., a cocker spaniel scampers around with a Mohawk haircut. The dog was shorn by 18-year-old Kurt Stoppkotte, to whom fashion—especially in hairstyles—has become something of an issue. Stoppkotte let his own hair grow while on an exchange program in Australia. But when he got back to Grand Island Northwest High School in the fall of 1990, school authorities didn't like what they saw. The student activities handbook specified that boys' hair could not go below the collar. Stoppkotte was banned from participating in choir performances and cross-country track, then ridiculed at school board meetings ("What will he wear next—a bra?"). Says Stoppkotte's farmer father, "I'm not partial to long hair myself, but I see no harm in it."

The final blow for the outspoken senior class president came when he was suspended for wearing a bandanna around his head. In December Stoppkotte will take his alma mater to court over the headband rule. His NCLU attorney bases her argument on the right to privacy and expressive speech under the Fifth, Ninth and 14th amendments. "It's been a pain," says the grad, who has had to postpone his plans to study in Spain this fall. "But, hey, we have rights in the schoolhouse too. If I'm not going to do anything about it, nobody will."

The Innocent Passenger

THE OMAHA POLICE got a tip on March 17, 1987, that a black drug courier transporting cocaine was arriving on a plane from Denver. Two undercover cops went to the airport, and the only black passenger they saw was a woman carrying a briefcase and a red teddy bear. She was Lu Ann Buffkins, a student of criminal justice. Her briefcase contained textbooks, and the bear was a gift for her nephew. The two intimidating-looking men blocked her path, and Buffkins, although innocent, was terrified. After seeing their badges, she went with them to an office but refused to open her bags, citing the Fourth Amendment rights she had just studied. She didn't fit the police department's "drug courier profile," and after interrogating her for almost an hour, the officers grudgingly said she was free to go. But on her way out, Buffkins made the mistake of muttering "asshole." She was swiftly handcuffed and arrested for disorderly conduct, and spent five hours in jail before her family bailed her out.

Though eventually found not guilty, Buffkins sued the city of Omaha and the officers, alleging illegal search and seizure, wrongful arrest and racial discrimination. She won in the U.S. Court of Appeals, but the case may go to the Supreme Court. Buffkins, now 37 years old and a security guard, has since gotten her two-year degree and plans to take more law classes.



From cornfields to cities, redressing grievances



The Recovering Alcoholic

YEARS AGO DARWIN Phillips, a Native American, did time for driving while intoxicated and for the theft of a car he took on a joyride. But in 1983 the Lincoln construction worker stopped drinking and was putting his life together when another blow fell: He hurt his back and couldn't work. He started his own company, but business was bad. His wife, whom he met at an Alcoholics Anonymous meeting, suggested he drive a cab; two years ago Phillips filled out a taxi license application. The licensing guidelines said nothing about

an applicant's past convictions but, knowing he had a record, the police rejected him.

Last summer his NCLU lawyer argued that the guidelines violated his right to due process because reasons for possible refusal weren't specified. The judge ruled against Phillips, but the city of Lincoln passed new guidelines, including one recommending that an applicant not have been convicted of a felony for 10 years. With two years to go, Phillips, now 53, reapplied. To his amazement, he was approved. He ran home to pick up the \$10 fee, and his wife "just danced." Last month he began driving. Says wife Patricia, "We lost in court, but we won the war."



The Fired Social Worker

RICK ALLEN, 44, of Bellevue can't talk about what happened to him last December without tears. Eight-year-old Julie (*left*) gets a tissue and dries her father's eyes. A nursing assistant who went back to the College of St. Mary to get his degree in human services, Allen had landed a job at the Eastern Nebraska Community Office of Retardation last November and was well regarded when he was suddenly, without warning, fired: His name had surfaced on the Child Protective Services registry, which lists people suspected of child abuse. "The accusation was like somebody had put a shotgun to my stomach and pulled the trigger," says Allen.

Eight years ago he had tried to have his teenage daughter from a previous marriage made a ward of the court—the only way he could afford to send her to an expensive drug rehabilitation program. During the proceedings, she claimed her father had once yanked her into the house when she tried to run out the door. That was enough to put Allen on the registry. No one told him he was on it, so he was unable to appeal. Even the presiding judge in the 1983 case has written a letter on Allen's behalf, calling the listing "grossly unfair."

An NCLU lawyer, who is now filing papers in court to have Allen's name removed from the registry, says the issue at hand is one of due process: "He was given no opportunity to answer the charges." Allen, who has diabetes, suffered a heart attack just three days after he was fired. Both he and his wife are unemployed, and Julie keeps asking why her daddy doesn't go to work in the morning like everyone else's. ☆

In cases grave and gallant, due process

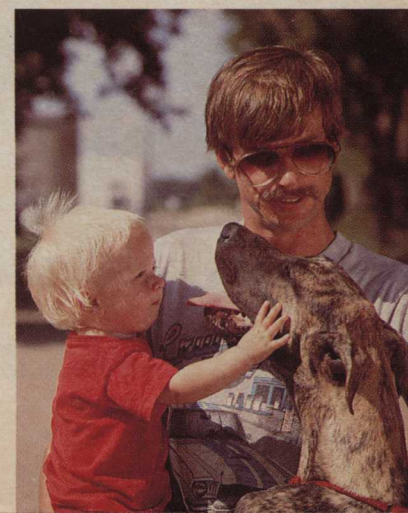
The Animal Lovers

IKNOW IT SOUNDS silly to go to court for dogs," says Kim Grover, 26. But last year she and her lab technician husband, Kirk, 30, did just that. It began when a man with a dozen noisy canines moved to the six-by-four-block hamlet of Winslow. The town cracked down, passing an ordinance limiting dogs per house-

hold to two. At the time, the Grovers and their three children had four dogs; they were ordered to get rid of two. "They have dirt roads and cattle a block away," protests Kim. "We didn't have a hundred dogs—we just wanted to keep the ones we had until they died."

Their lawyer maintained that the ordinance, which was worded so that dogs could be seized without just compensation, was contrary to the Fifth Amendment. But after

hearing a neighbor's complaints about barking, the judge ruled that the dogs were a nuisance and that two had to go, whether it was constitutional or not. "We were heartbroken," says Kim. They gave away two dogs. A third one died, they think, of loneliness. But about a year ago Kirk (*right*) and Kim increased their household by two without exceeding the legal limit—the boy is named Jacob, his new best friend, Sharese.



This is about undiscovered places. Places that you simply can't ever hope to see until

When was
the last time
you travelled
across America
and actually
got to see it
along the way?

you travel across this country by train. On a train, you can stretch, relax. And if you manage to stop gazing out your window, you'll find friendly service, fine meals, new people. On a train, you can travel to

any one of over 500 destinations. And see at least that many undiscovered places along the way. For reservations, call your travel agent. Or Amtrak, at 1-800-USA-RAIL.



ALL ABOARD AMTRAK 



“...the truth is, that oil change took less than 29 minutes, didn't it?”

I sensed he was about to crack. An oil change at a GM dealership taking an hour and a half? Not at a Mr. Goodwrench Quick Lube Plus dealership, mister. So much for your alibi.

It's true. At Mr. Goodwrench Quick Lube® Plus, you're guaranteed a complete oil change with GM Goodwrench® oil, an AC Duraguard filter and 10-point maintenance check in 29 minutes or less, or the next one's free. So visit your participating GM dealership and try Mr. Goodwrench® Quick Lube Plus...for a change. It's proof positive that we're serious about putting service back into the service department.

For the participating Mr. Goodwrench Quick Lube Plus dealership nearest you, phone **1-800-GM USE US**.

Mr. Goodwrench keeps quality on the road.



29 minutes or less. Guaranteed.

©1991 GM Corp. All rights reserved. Guarantee applies to GM cars and light trucks. See your participating dealer for details.